

# EXHIBIT 31

Haines, Jeani Lee

CONFIDENTIAL  
Nashville, TN

January 30, 2008

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

-----X

In re: PHARMACEUTICAL INDUSTRY ) MDL No. 1456

AVERAGE WHOLESALE PRICE )

LITIGATION )

-----)

THIS DOCUMENT RELATES TO: ) Civil Action

United States of America, ex ) No. 01-12257-PBS

rel. Ven-A-Care of the Florida ) Judge Patti B.

Keys, Inc. v. Abbott, ) Saris

Laboratories, Inc. ) Magistrate Judge

CIVIL ACTION NO. 06-11337-PBS ) Marianne B. Bowler

-----X

CONFIDENTIAL VIDEOTAPED DEPOSITION OF

JEANI LEE HAINES

Taken on behalf of the Relator, Ven-A-Care

of the Florida Keys, Inc.

January 30, 2008

Nashville, TN

(CAPTION CONTINUES ON FOLLOWING PAGE)

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Haines, Jeani Lee

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January 30, 2008

Nashville, TN

|   |   |
|---|---|
| <p style="text-align: right;">Page 138</p> <p>1 given the wholesaler EPIC numbers.<br/> 2 BY MR. RIKLIN:<br/> 3 Q. Okay.<br/> 4 A. So we provide those based on what<br/> 5 wholesaler they used.<br/> 6 Q. Okay. Did these price lists ever<br/> 7 contain AWP?<br/> 8 A. No.<br/> 9 Q. AWP's?<br/> 10 A. No.<br/> 11 Q. Okay. Any other written -- other than<br/> 12 these price lists you referred to, any other<br/> 13 written materials that you provided to your<br/> 14 accounts at these meetings?<br/> 15 MR. SCANNAPIECO: Objection, form.<br/> 16 A. Literature, product literature.<br/> 17 BY MR. RIKLIN:<br/> 18 Q. Okay. And what did the product<br/> 19 literature consist of generally?<br/> 20 MR. SCANNAPIECO: Objection, form.<br/> 21 A. Photos, description.<br/> 22 BY MR. RIKLIN:</p>  | <p style="text-align: right;">Page 140</p> <p>1 BY MR. RIKLIN:<br/> 2 Q. Okay. When was it brought to your<br/> 3 attention that Medicare and Medicaid based<br/> 4 reimbursement on a percentage off of AWP?<br/> 5 MR. SCANNAPIECO: Objection, form.<br/> 6 A. That was five or six years ago, five<br/> 7 years ago, when we were made aware of the change<br/> 8 in Vancomycin.<br/> 9 Q. Okay. And how were you made aware that<br/> 10 Medicare and Medicaid based reimbursement on a<br/> 11 percentage off of AWP?<br/> 12 MR. SCANNAPIECO: Objection.<br/> 13 BY MR. RIKLIN:<br/> 14 Q. You said it was in connection with a<br/> 15 price change for Vancomycin?<br/> 16 MR. SCANNAPIECO: Objection, form.<br/> 17 A. Can I clarify that?<br/> 18 Q. Sure.<br/> 19 A. I didn't -- I wasn't aware that it was<br/> 20 paid a percentage based on Medicare/Medicaid.<br/> 21 Q. Well, maybe it would help -- maybe it<br/> 22 would be better if you just told us what it was</p> |
| <p style="text-align: right;">Page 139</p> <p>1 Q. Description of the product?<br/> 2 A. Sometimes the package insert.<br/> 3 Q. But not pricing information?<br/> 4 A. No.<br/> 5 Q. Okay. Ms. Haines, as an account<br/> 6 manager, did you come to understand that Medicare<br/> 7 and Medicaid based reimbursement on a percentage<br/> 8 off of AWP; is that your understanding?<br/> 9 MR. SCANNAPIECO: Objection, form.<br/> 10 A. I didn't have an understanding of it.<br/> 11 BY MR. RIKLIN:<br/> 12 Q. You never -- you never knew that?<br/> 13 A. Didn't know that.<br/> 14 Q. Did you ever hear that from any source<br/> 15 --<br/> 16 MR. SCANNAPIECO: Objection, form.<br/> 17 BY MR. RIKLIN:<br/> 18 Q. -- during the time that you were an<br/> 19 account manager?<br/> 20 MR. SCANNAPIECO: Objection, form.<br/> 21 A. There was a time when it was brought to<br/> 22 my attention.</p> | <p style="text-align: right;">Page 141</p> <p>1 you became aware of five or six years ago<br/> 2 relating to Medicare and Medicare reimbursement?<br/> 3 MR. SCANNAPIECO: Objection, form.<br/> 4 A. I had a customer tell me that the AWP<br/> 5 had changed on our Vancomycin.<br/> 6 BY MR. RIKLIN:<br/> 7 Q. Okay. What else did the customer tell<br/> 8 you?<br/> 9 A. That exactly what you said, that it<br/> 10 impacted the reimbursement.<br/> 11 Q. Okay. And did your customer tell you<br/> 12 that as a result -- did your customer tell you<br/> 13 there was a decrease in the AWP for Vancomycin?<br/> 14 MR. SCANNAPIECO: Objection, form.<br/> 15 A. Yes.<br/> 16 BY MR. RIKLIN:<br/> 17 Q. And did the customer tell you that that<br/> 18 affected the amount of the reimbursement by<br/> 19 Medicare or Medicaid for that -- for that<br/> 20 product?<br/> 21 MR. SCANNAPIECO: Objection, form.<br/> 22 BY MR. RIKLIN:</p>                                       |

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| Page 142   | Page 144   |
|--|--|
| <p>1 Q. What were you told?</p> <p>2 MR. SCANNAPIECO: Objection, form.</p> <p>3 A. I wasn't told the specifics, just that</p> <p>4 it affected their reimbursement.</p> <p>5 BY MR. RIKLIN:</p> <p>6 Q. Okay. And when you say "affected their</p> <p>7 reimbursement," did the customer tell you that it</p> <p>8 decreased the amount of the reimbursement for</p> <p>9 that product, Vancomycin?</p> <p>10 MR. SCANNAPIECO: Objection, form.</p> <p>11 A. Yes.</p> <p>12 BY MR. RIKLIN:</p> <p>13 Q. Okay. And do you recall whether the</p> <p>14 customer was referring to Medicare reimbursement,</p> <p>15 Medicaid reimbursement or other third party</p> <p>16 reimbursement; do you recall?</p> <p>17 MR. SCANNAPIECO: Objection, form.</p> <p>18 A. I don't recall the specifics.</p> <p>19 BY MR. RIKLIN:</p> <p>20 Q. What did you do with that information?</p> <p>21 Let me back up. Is that the first time that it</p> <p>22 had ever come to your attention that Medicare and</p> | <p>1 Q. Okay. That's action.</p> <p>2 A. Okay.</p> <p>3 Q. You mentioned it to your district</p> <p>4 manager?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you mention it to anybody</p> <p>7 else?</p> <p>8 MR. SCANNAPIECO: Objection, form.</p> <p>9 A. I believe he mentioned it to people</p> <p>10 above him.</p> <p>11 BY MR. RIKLIN:</p> <p>12 Q. Okay.</p> <p>13 A. Because we --</p> <p>14 Q. He took the information you conveyed</p> <p>15 and he conveyed it to his superiors, correct?</p> <p>16 MR. SCANNAPIECO: Objection, form.</p> <p>17 A. Yes.</p> <p>18 BY MR. RIKLIN:</p> <p>19 Q. Back at Abbott Park?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And what did you tell your</p> <p>22 general manager?</p>  |
| Page 143   | Page 145   |
| <p>1 Medicaid based reimbursement in some form or</p> <p>2 fashion on AWP?</p> <p>3 MR. SCANNAPIECO: Objection, form.</p> <p>4 A. Yes.</p> <p>5 BY MR. RIKLIN:</p> <p>6 Q. Okay. And did your customer indicate</p> <p>7 to you that it was intended to take any action as</p> <p>8 a result of the reduction in the reimbursement</p> <p>9 from Vancomycin?</p> <p>10 MR. SCANNAPIECO: Objection, form.</p> <p>11 A. I don't recall.</p> <p>12 BY MR. RIKLIN:</p> <p>13 Q. Okay. Well, do you recall taking any</p> <p>14 action after receiving that information from your</p> <p>15 account?</p> <p>16 A. That I took action?</p> <p>17 Q. Yeah. Did you take any action?</p> <p>18 MR. SCANNAPIECO: Objection, form.</p> <p>19 A. Well, there was -- no, I didn't. I</p> <p>20 mean, I -- of course, I mentioned it to my</p> <p>21 manager.</p> <p>22 BY MR. RIKLIN:</p>  | <p>1 MR. SCANNAPIECO: Objection, form.</p> <p>2 A. Just what I had been told.</p> <p>3 BY MR. RIKLIN:</p> <p>4 Q. Did -- did your -- what was your</p> <p>5 general manager's response to you when you told</p> <p>6 him -- is this Mr. Beck?</p> <p>7 MR. SCANNAPIECO: Objection, form.</p> <p>8 A. Yes.</p> <p>9 BY MR. RIKLIN:</p> <p>10 Q. Okay. When you told -- gave Mr. Beck</p> <p>11 this information from your account regarding the</p> <p>12 reduction and reimbursement for Vanco, what was</p> <p>13 his response?</p> <p>14 MR. SCANNAPIECO: Objection, form.</p> <p>15 A. We don't set AWP.</p> <p>16 BY MR. RIKLIN:</p> <p>17 Q. Okay. And did he --</p> <p>18 A. Which --</p> <p>19 Q. Pardon me?</p> <p>20 A. Sorry.</p> <p>21 Q. I'm sorry.</p> <p>22 A. I didn't mean to interrupt.</p> |

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Nashville, TN

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1 Q. No, that's okay. Go ahead. That was  
2 his response, we don't set AWP?  
3 A. Correct, which was my response also.  
4 Q. That was your response to the customer?  
5 A. Uh-huh.  
6 Q. Okay. Did you give -- did you make any  
7 recommendations to the customer, I mean, other  
8 than to say, we don't set AWP?  
9 MR. SCANNAPIECO: Objection, form.  
10 A. That was my understanding that the  
11 First DataBank makes the AWP.  
12 Q. Okay. And who is First DataBank?  
13 MR. SCANNAPIECO: Objection, form.  
14 A. I don't know.  
15 BY MR. RIKLIN:  
16 Q. Well, you mentioned First DataBank, is  
17 it your understanding that First DataBank is a  
18 service that reports prices for drug products,  
19 including Abbott's drug products?  
20 MR. SCANNAPIECO: Objection, form.  
21 A. I don't have a clear understanding of  
22 First DataBank.

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1 BY MR. RIKLIN:  
2 Q. Okay. Well, you mentioned a minute ago  
3 that it was your understanding that First  
4 DataBank determines AWP's?  
5 A. Uh-huh.  
6 Q. Okay. What is your understanding about  
7 how First DataBank determines AWP's?  
8 MR. SCANNAPIECO: Objection, form.  
9 A. I don't have an understanding of that.  
10 BY MR. RIKLIN:  
11 Q. Well, what is your understanding of  
12 what First DataBank is?  
13 A. I --  
14 MR. SCANNAPIECO: Objection, form.  
15 A. -- I don't have an understanding of  
16 that. I just know that, from my history with  
17 Abbott, there was a policy that we don't discuss  
18 AWP because we are the manufacturer and we don't  
19 set it.  
20 BY MR. RIKLIN:  
21 Q. Okay. Did that policy -- did you ever  
22 see that policy in writing?

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1 MR. SCANNAPIECO: Objection, form.  
2 BY MR. RIKLIN:  
3 Q. In written form?  
4 A. Not that I recall.  
5 Q. How was that policy first communicated  
6 to you?  
7 MR. SCANNAPIECO: Objection, form.  
8 A. I don't recall how it was first  
9 communicated to me. I do know that from, you  
10 know, that Vancomycin AWP decrease, there was  
11 communication there. As far as prior to that,  
12 you know, we were just told that we don't set the  
13 AWP.  
14 BY MR. RIKLIN:  
15 Q. Who -- who told you, who first told you  
16 that Abbott does not discuss AWP? Do you recall  
17 who that was?  
18 A. Who first told me?  
19 Q. Uh-huh.  
20 A. No, I don't.  
21 Q. Do you recall when it was?  
22 A. No. It's just always been out there.

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1 Q. It's always been out there?  
2 A. That I can recall.  
3 Q. And was it told to you for the first  
4 time before you became an account manager or do  
5 you recall?  
6 MR. SCANNAPIECO: Objection, form.  
7 A. I don't recall when.  
8 BY MR. RIKLIN:  
9 Q. You don't --  
10 A. I know when I was out in the field, I  
11 knew that we don't set AWP.  
12 Q. Okay. And you started out in the field  
13 in 1997?  
14 A. Yes.  
15 Q. Okay. So it -- logically, it was  
16 sometime prior to that time when you went out  
17 into the field that it was communicated to you  
18 that Abbott doesn't set AWP?  
19 MR. SCANNAPIECO: Objection, form.  
20 A. Might have been.  
21 BY MR. RIKLIN:  
22 Q. You're not sure?

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# EXHIBIT 32

Harling, David

CONFIDENTIAL  
Fort Wayne, IN

October 30, 2007

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL INDUSTRY ) MDL DOCKET NO.  
AVERAGE WHOLESALE PRICE ) CIVIL ACTION  
LITIGATION. ) 01CV12257-PBS  
----- ) CONFIDENTIAL

The videotaped deposition of DAVID HARLING, called by the United States for examination, taken pursuant to subpoena and pursuant to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before Rachel F. Gard, Certified Shorthand Reporter, at 111 East Wayne Street, Suite 800, Fort Wayne, Indiana, commencing at 9:10 a.m. on the 30th day of October, A.D., 2007.

Henderson Legal Services  
202-220-4158

Harling, David

CONFIDENTIAL  
Fort Wayne, IN

October 30, 2007

|   |   |
|---|---|
| <p style="text-align: right;">Page 38</p> <p>1 a field rep between '92 and '97?</p> <p>2 A. I was hired into the position by Bob</p> <p>3 Curtis, and I believe he -- they realigned</p> <p>4 territories. And very shortly after, probably</p> <p>5 eight months after I took on the position, I then</p> <p>6 reported to Craig Smith.</p> <p>7 Q. And was Craig Smith your supervisor when</p> <p>8 you left this position in '97?</p> <p>9 A. Yes.</p> <p>10 Q. Would it have been your practice that if</p> <p>11 you brought an issue from the field that you would</p> <p>12 have taken it to your immediate supervisor?</p> <p>13 A. Most likely.</p> <p>14 Q. So is it most likely that with regard to</p> <p>15 this particular reimbursement issue with this</p> <p>16 customer, you would have taken it to your immediate</p> <p>17 supervisor?</p> <p>18 MR. WINCHESTER: Objection, form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't recall particularly who I brought</p> <p>21 it to, but I may very well have brought it to</p> <p>22 Craig.</p>  | <p style="text-align: right;">Page 40</p> <p>1 experience as a field sales rep, did a customer</p> <p>2 ever ask you any questions regarding reimbursement</p> <p>3 of Abbott's products?</p> <p>4 A. No.</p> <p>5 Q. Exhibit Harling 003, the spreadsheet</p> <p>6 that's attached to Exhibit Harling 003, would this</p> <p>7 have been of any use to you as a field sales rep?</p> <p>8 MR. HANLON: Objection, form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I don't believe so.</p> <p>11 Q. Why is that?</p> <p>12 A. I don't believe that AWP was something</p> <p>13 that was important to my role as a sales position.</p> <p>14 Q. Do you think that AWP was important to</p> <p>15 the customer?</p> <p>16 MR. HANLON: Objection, form.</p> <p>17 MR. WINCHESTER: Objection, form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I don't know.</p> <p>20 Q. Okay. All right. So after working five</p> <p>21 years as an infusion sales specialist in</p> <p>22 Scottsdale, Arizona, you relocated to Chicago,</p>                         |
| <p style="text-align: right;">Page 39</p> <p>1 Q. And do you recall what discussion you had</p> <p>2 regarding the reimbursement issue?</p> <p>3 A. I don't recall the particular discussion.</p> <p>4 I remember the basic result was, you know, we don't</p> <p>5 have control or ability to affect the reimbursement</p> <p>6 for a customer. All we can sell on is our line of</p> <p>7 product, the service that we provide, and the</p> <p>8 quality of our product and our price.</p> <p>9 Q. With regard to Exhibit -- your Exhibit</p> <p>10 Harling 003 which is before you and the attached</p> <p>11 spreadsheet, if you could look to the first page --</p> <p>12 There you go.</p> <p>13 A. This page?</p> <p>14 Q. Uh-huh. Do you believe that the</p> <p>15 information in this spreadsheet would have been</p> <p>16 useful to a sales representative regarding any</p> <p>17 customer questions on reimbursement?</p> <p>18 MR. HANLON: Objection, form, calls for</p> <p>19 speculation.</p> <p>20 BY THE WITNESS:</p> <p>21 A. I have no idea.</p> <p>22 Q. Did a customer -- Other than that one</p> | <p style="text-align: right;">Page 41</p> <p>1 Illinois, where you took on a new position as a</p> <p>2 contract marketing analyst; is that right?</p> <p>3 A. Yes.</p> <p>4 Q. And that would have been in April of '97?</p> <p>5 A. I relocated in April of '97, yes.</p> <p>6 Q. Okay. Now, what was your job and what</p> <p>7 did you do as a contract marketing analyst?</p> <p>8 A. Worked on the contracts and the pricing</p> <p>9 for customers.</p> <p>10 Q. Okay. And if I understood your testimony</p> <p>11 earlier, your duties would -- you would become</p> <p>12 involved in contracting and pricing for customers</p> <p>13 only when the price was at a discount off of list,</p> <p>14 correct?</p> <p>15 A. Correct.</p> <p>16 Q. So your duties did not involve you when a</p> <p>17 sale was made at list, correct?</p> <p>18 MR. WINCHESTER: Objection, form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. Correct.</p> <p>21 Q. All right. Okay. Can you take us</p> <p>22 generally through how you did your job?</p> |

11 (Pages 38 to 41)

Harling, David

CONFIDENTIAL  
Fort Wayne, IN

October 30, 2007

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1 5:33 p.m. with the conclusion of the October 30th  
2 deposition of David Harling.

3 (WHEREUPON, the deposition was  
4 adjourned.)  
5  
6  
7  
8

9 \_\_\_\_\_  
10 SIGNATURE OF THE WITNESS

11 Subscribed and sworn to and before me  
12 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
13  
14

15 \_\_\_\_\_  
16 Notary Public  
17  
18  
19  
20  
21  
22

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1 UNITED STATES OF AMERICA )  
NORTHERN DISTRICT OF ILLINOIS )  
1 EASTERN DIVISION ) SS.  
STATE OF ILLINOIS )  
1 COUNTY OF COOK )

2 I, Rachel F. Gard, Certified Shorthand  
3 Reporter, do hereby certify that DAVID HARLING was first  
4 duly sworn by me to testify to the whole truth and that  
5 the above videotaped deposition was reported  
6 stenographically by me and reduced to typewriting under  
7 my personal direction.

8 I further certify that the said videotaped  
9 deposition was taken at the time and place specified and  
10 that the taking of said videotaped deposition commenced  
11 on the 30th day of October, A.D., 2007, at 9:10 a.m. at  
12 the offices of Baker & Daniels, 111 East Wayne Street,  
13 Suite 800, Fort Wayne, Indiana.

14 I further certify that I am not a relative or  
15 employee or attorney or counsel of any of the parties,  
16 nor a relative or employee of such attorney or counsel,  
17 nor financially interested directly or indirectly in  
18 this action.

19 In witness whereof, I have hereunto set my  
20 hand and affixed my seal of office this 7th day of  
21 November, A.D., 2007.

21 \_\_\_\_\_  
22 RACHEL F. GARD, CSR  
CSR No. 084-003324

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# EXHIBIT 33

Harsh, Harold

February 19, 2008

Pittsburgh, PA

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
In re: PHARMACEUTICAL INDUSTRY ) MDL 1456  
AVERAGE WHOLESALE PRICE LITIGATION) Civil Action  
-----) No. 01-12257-PBS  
THIS DOCUMENT RELATES TO: )  
United States of America, ex rel. )  
Ven-a-Care of the Florida Keys, )  
Inc. v. Abbott Laboratories, Inc., )  
CIVIL ACTION NO. 06-11337-PBS )  
-----X

(CAPTION CONTINUED ON FOLLOWING PAGE)

DEPOSITION OF: HAROLD HARSH

DATE: February 19, 2008  
Tuesday, 10:11 a.m.

LOCATION: JONES DAY REAVIS & POGUE  
31 One Mellon Bank Center  
Pittsburgh, PA 15219

TAKEN BY: Ven-A-Care

REPORTED BY: G. Donavich, RPR, CRR  
Notary Public

Henderson Legal Services, Inc.

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Harsh, Harold

February 19, 2008

Pittsburgh, PA

|   |  |
|---|--|
| <p style="text-align: right;">Page 78</p> <p>1 Q. Were there national meetings that you</p> <p>2 attended?</p> <p>3 A. Not every year, but there were national</p> <p>4 meetings.</p> <p>5 Q. What, if anything, do you recall about</p> <p>6 the presentations made at national meetings?</p> <p>7 A. Basically the same thing as district</p> <p>8 and regional meetings. You just rehash the same</p> <p>9 things over and over again about the products,</p> <p>10 and we talked about new products and sales goals</p> <p>11 and things like that.</p> <p>12 Q. To the extent that you received</p> <p>13 training that you would characterize as selling</p> <p>14 skills, what can you tell me about that type of</p> <p>15 training?</p> <p>16 A. Just how to talk to a customer, probe</p> <p>17 them to see what their needs are when promoting</p> <p>18 the product.</p> <p>19 Q. What discussion, if any, did you have</p> <p>20 in the course of training about selling skills</p> <p>21 about prices of Abbott products?</p> <p>22 MR. SCANNAPIECO: Objection. Form.</p> | <p style="text-align: right;">Page 80</p> <p>1 MS. THOMAS: Do you remember anything</p> <p>2 during the time you were at Abbott Alt Site where</p> <p>3 you engaged in discussions about pricing of</p> <p>4 Abbott's drug products?</p> <p>5 MR. SCANNAPIECO: Objection. Form.</p> <p>6 THE WITNESS: I can't remember.</p> <p>7 MS. THOMAS: Do you recall any</p> <p>8 discussions with other Abbott employees or at</p> <p>9 these meetings or training sessions about</p> <p>10 reimbursement of Abbott's products?</p> <p>11 MR. SCANNAPIECO: Objection. Form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. THOMAS:</p> <p>14 Q. You have no recollection during your</p> <p>15 nine years there of ever having talked about</p> <p>16 reimbursement of Abbott's products?</p> <p>17 A. I don't remember.</p> <p>18 Q. Do you recall any discussion to the</p> <p>19 effect that one should not talk about</p> <p>20 reimbursement issues pertaining to Abbott</p> <p>21 products?</p> <p>22 A. No.</p>   |
| <p style="text-align: right;">Page 79</p> <p>1 THE WITNESS: I don't recall.</p> <p>2 BY MS. THOMAS:</p> <p>3 Q. You don't recall whether the topic came</p> <p>4 up or you don't recall what was said?</p> <p>5 A. I just don't remember if they did that.</p> <p>6 Q. Do you have any recollection at all of</p> <p>7 price being discussed during any district,</p> <p>8 regional, or national meetings?</p> <p>9 MR. SCANNAPIECO: Objection. Form.</p> <p>10 THE WITNESS: There could have been</p> <p>11 price discussed, yeah, on pumps, what kind of</p> <p>12 different programs they had for the pumps, but I</p> <p>13 don't recall.</p> <p>14 BY MS. THOMAS:</p> <p>15 Q. When you say what types of programs</p> <p>16 they had, promotional-type programs Abbott had to</p> <p>17 sell its pumps? Is that what you're referring</p> <p>18 to?</p> <p>19 A. Yes.</p> <p>20 Q. How about pertaining to drug products?</p> <p>21 MR. SCANNAPIECO: Objection. Form.</p> <p>22 THE WITNESS: I can't remember.</p>  | <p style="text-align: right;">Page 81</p> <p>1 Q. Do you recall one of the things that</p> <p>2 you were taught to do in working with a customer</p> <p>3 involved learning what that customer's payor mix</p> <p>4 was?</p> <p>5 A. No.</p> <p>6 Q. Do you recall ever being told that one</p> <p>7 of the things you ought to know as an Abbott</p> <p>8 sales representative was the manner in which your</p> <p>9 customers were reimbursed for products that they</p> <p>10 were buying from Abbott?</p> <p>11 MR. SCANNAPIECO: Objection. Form.</p> <p>12 THE WITNESS: No.</p> <p>13 MS. THOMAS: Did you ever know anything</p> <p>14 about any of your customers' means of getting</p> <p>15 reimbursed for product that you were promoting to</p> <p>16 them?</p> <p>17 MR. SCANNAPIECO: Objection. Form.</p> <p>18 THE WITNESS: No.</p> <p>19 MS. THOMAS: So you encouraged them to</p> <p>20 buy product, which they then bought from Abbott,</p> <p>21 but there was never any discussion about the</p> <p>22 manner or level at which they would be reimbursed</p> |

21 (Pages 78 to 81)

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Harsh, Harold

February 19, 2008

Pittsburgh, PA

|  |  |
|--|--|
| <p style="text-align: right;">Page 82</p> <p>1 for the product when it was dispensed to a<br/>2 patient?<br/>3 MR. SCANNAPIECO: Objection. Form.<br/>4 THE WITNESS: No. I sold the product<br/>5 to the company.<br/>6 BY MS. THOMAS:<br/>7 Q. Right.<br/>8 A. I didn't know like where it was going.<br/>9 Q. Where did you think it was going?<br/>10 A. To a patient.<br/>11 Q. And how --<br/>12 A. Go ahead. I'm sorry.<br/>13 Q. I'm sorry. I didn't mean to cut you<br/>14 off.<br/>15 How, if at all, did you understand that<br/>16 your customers who were providing or dispensing<br/>17 this product to patients, how were your customers<br/>18 getting paid?<br/>19 MR. SCANNAPIECO: Objection to form.<br/>20 THE WITNESS: I don't know.<br/>21 MS. THOMAS: You had no idea? All nine<br/>22 years that you were promoting product, you had no</p>  | <p style="text-align: right;">Page 84</p> <p>1 discussions with your customers about the prices<br/>2 at which they were obtaining Abbott products?<br/>3 And I'm switching gears here. We're talking<br/>4 about the price they paid to obtain the Abbott<br/>5 products.<br/>6 THE WITNESS: Yes.<br/>7 MS. THOMAS: Was that a frequent topic<br/>8 of discussion in your sales and marketing<br/>9 efforts?<br/>10 MR. SCANNAPIECO: Objection. Form.<br/>11 THE WITNESS: For pumps, yes.<br/>12 BY MS. THOMAS:<br/>13 Q. How about for Abbott drug products?<br/>14 A. No.<br/>15 Q. Nobody seemed to care what the price of<br/>16 the product was when you were marketing it?<br/>17 MR. SCANNAPIECO: Objection. Form.<br/>18 THE WITNESS: I'm sure they did.<br/>19 BY MS. THOMAS:<br/>20 Q. Did they just know what the price was<br/>21 independent of your conversation so it didn't<br/>22 have to come up in conversation with you? Is</p> |
| <p style="text-align: right;">Page 83</p> <p>1 idea how they got -- like what happened after<br/>2 they gave a product to a patient?<br/>3 MR. SCANNAPIECO: Objection. Form.<br/>4 THE WITNESS: No. I can't remember.<br/>5 MS. THOMAS: Did you deal exclusively<br/>6 with charitable organizations who probably<br/>7 provided product for free to patients?<br/>8 MR. SCANNAPIECO: Objection. Form.<br/>9 THE WITNESS: No.<br/>10 BY MS. THOMAS:<br/>11 Q. So to the best of your understanding,<br/>12 the customers that you were calling on were for-<br/>13 profit companies that were looking to be paid<br/>14 when they dispensed or administered a product to<br/>15 a patient. Correct?<br/>16 A. Yes.<br/>17 Q. But you never engaged in any<br/>18 conversation with anyone about how they would get<br/>19 paid or the level at which they would get paid?<br/>20 MR. SCANNAPIECO: Object to the form.<br/>21 THE WITNESS: No.<br/>22 MS. THOMAS: Did you engage in</p> | <p style="text-align: right;">Page 85</p> <p>1 that your understanding?<br/>2 A. Yes.<br/>3 Q. How did your customers know what the<br/>4 prices were --<br/>5 MR. SCANNAPIECO: Objection. Form.<br/>6 MS. THOMAS: -- for Abbott drug<br/>7 products?<br/>8 MR. SCANNAPIECO: Objection. Form.<br/>9 THE WITNESS: If they --<br/>10 BY MS. THOMAS:<br/>11 Q. I'll rephrase the question.<br/>12 What understanding, if any, did you<br/>13 have as to how your customers knew what the<br/>14 prices were for Abbott drug products?<br/>15 A. I'm sure that they would have a GPO<br/>16 that they would get prices from.<br/>17 Q. A GPO refers to?<br/>18 A. Like a group purchasing organization.<br/>19 Q. And it's your understanding that by<br/>20 virtue of your customers being members of a GPO,<br/>21 the price at which they would obtain Abbott drug<br/>22 products was essentially predetermined by the</p>                           |

22 (Pages 82 to 85)

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# EXHIBIT 34

Heggie, Michael

CONFIDENTIAL  
Philadelphia, PA

May 17, 2007

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - -

IN RE: PHARMACEUTICAL : MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION  
PRICE LITIGATION : 01-CV-12257-PBS

vs. :

THIS DOCUMENT RELATES TO : CONFIDENTIAL

U.S. ex rel. Ven-A-Care of :

The Florida Keys, Inc. :

v. Abbott Laboratories, :

Inc., No. 06-CV-11337-PBS :

And :

State of California, ex :

Rel. Ven-A-Care vs. Abbott :

Laboratories, Inc., et al :

Case No. 1:03-cv-11226-PBS :

And :

State of Texas ex rel. :

Ven-A-Care of the Florida :

Keys, Inc. vs. Abbott :

Laboratories, et al, :

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Heggie, Michael

CONFIDENTIAL  
Philadelphia, PA

May 17, 2007

|   |  |
|---|--|
| <p style="text-align: right;">Page 202</p> <p>1 ultimate authority and control over the Medicaid<br/>2 rebate submissions for HPD products; correct?<br/>3 MS. CITERA: Objection to form.<br/>4 THE WITNESS: Yes.<br/>5 BY MR. ANDERSON:<br/>6 Q. Likewise, did Mr. Ward or other general<br/>7 managers of Alternate Site product sales have<br/>8 ultimate control and authority over the list prices<br/>9 that were reported for HPD products to the<br/>10 compendia?<br/>11 MS. CITERA: Objection to form.<br/>12 THE WITNESS: To my knowledge, no,<br/>13 they did not.<br/>14 BY MR. ANDERSON:<br/>15 Q. Why not?<br/>16 A. Because -- we have actually gone over<br/>17 this before. The list prices were established at a<br/>18 corporate level.<br/>19 Q. Why were the rebate submissions not<br/>20 approved at the corporate level?<br/>21 A. Approved? The rebate submissions<br/>22 approved? I don't understand what you mean by</p>                                 | <p style="text-align: right;">Page 204</p> <p>1 A. Yes.<br/>2 Q. And in fact, over the years, Abbott has<br/>3 actively partnered with such pharmacies and sought<br/>4 to help them in filing reimbursement claims;<br/>5 correct?<br/>6 MS. CITERA: Objection to form.<br/>7 THE WITNESS: Correct.<br/>8 BY MR. ANDERSON:<br/>9 Q. And shared in the proceeds of those<br/>10 claims, including claims that were submitted to<br/>11 Medicare and Medicaid; correct?<br/>12 A. Yes, correct.<br/>13 Q. So why was it that if these products<br/>14 were being sold through hospitals, as well as<br/>15 Alternate Site customers, that John Ward was given<br/>16 the authority and control over the Medicaid rebate<br/>17 submissions?<br/>18 MS. CITERA: Objection to form.<br/>19 THE WITNESS: Because hospitals are<br/>20 hospitals, and they are inpatient entities.<br/>21 Outpatient entities came over to Alternate Site.<br/>22 So anything that was outpatient was over in</p>   |
| <p style="text-align: right;">Page 203</p> <p>1 approved.<br/>2 Q. You said John Ward had control and<br/>3 authority as the general manager of Alternate Site<br/>4 product sales for the HDP rebate submissions;<br/>5 correct?<br/>6 MS. CITERA: Objection to form.<br/>7 THE WITNESS: He had responsibility<br/>8 for that program, I mean, yes, and it was charged<br/>9 to his budget, yes.<br/>10 BY MR. ANDERSON:<br/>11 Q. So why was that control and authority<br/>12 located in Alternate Site when these were products<br/>13 that were being sold to hospitals as well as<br/>14 Alternate Site customers?<br/>15 MS. CITERA: Objection to form.<br/>16 THE WITNESS: But they weren't, the<br/>17 Medicaid program, that Medicaid Drug Rebate Program<br/>18 is not a hospital program at all. It has nothing<br/>19 to do with hospitals.<br/>20 BY MR. ANDERSON:<br/>21 Q. Well, you understand that hospitals also<br/>22 have outpatient pharmacies, don't you?</p> | <p style="text-align: right;">Page 205</p> <p>1 Alternate Site. That's how Ward got it.<br/>2 BY MR. ANDERSON:<br/>3 Q. And were those outpatient pharmacies<br/>4 purchasing under contracts that they had obtained<br/>5 from the hospital business sector?<br/>6 A. I don't know. I don't know anything<br/>7 about the contracting. I knew contracts exist,<br/>8 existed, and I knew there were discounts in<br/>9 contracts, and I knew the contracts went for<br/>10 periods of time, and that's my total knowledge of<br/>11 contracts.<br/>12 Q. You mentioned that you have attended<br/>13 industry meetings concerning reimbursement; is that<br/>14 correct?<br/>15 A. Sure, yes.<br/>16 Q. And you said that you would attend,<br/>17 what, a couple of those per year?<br/>18 A. In the early days, when I was learning,<br/>19 I went to several. I would go to maybe three a<br/>20 year. Lately, I don't go to very many.<br/>21 Q. And the audience of these industry<br/>22 meetings are fellow drug company personnel and</p> |

52 (Pages 202 to 205)

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Heggie, Michael

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Philadelphia, PA

May 17, 2007

Page 298

1 Have you had any other discussions  
2 with the Department of Justice or the State of  
3 Texas, since then other than in the deposition  
4 context?  
5 A. No.  
6 MS. CITERA: Okay, that's all I  
7 have.  
8 THE VIDEO TAPE OPERATOR: This  
9 concludes the video tape deposition of Michael  
10 Heggie. We are now going off the video record.  
11 The time is 8:51.  
12 ---  
13 MR. ANDERSON: I just want to state  
14 for the record that we have searched high and low  
15 for selling materials, and to my knowledge, the AIM  
16 reimbursement guide or related selling materials  
17 have not been produced in this case, and to the  
18 extent they are subsequently produced, I reserve  
19 the right to question Mr. Heggie about those, as he  
20 is the author of that, and I certainly contend that  
21 those materials should have been produced by now,  
22 alleviating the need to recall Mr. Heggie.

Page 299

1 MS. CITERA: I object to your  
2 characterization or that we are going to come back  
3 here again.  
4 MR. GOBENA: Do you think it would  
5 be possible maybe to identify whether it is federal  
6 production or California or Texas where that module  
7 might be? Are you saying it was produced?  
8 MS. CITERA: I thought it was, but I  
9 have been looking at these documents for --  
10 THE WITNESS: It was a looseleaf  
11 binder.  
12 ---  
13 (Whereupon the deposition was  
14 concluded at 8:52 p.m.)  
15 ---  
16  
17 \_\_\_\_\_  
18 MICHAEL HEGGIE  
19 Subscribed and sworn to and before me  
20 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
21 \_\_\_\_\_  
22 Notary Public

Page 300

1 CERTIFICATE  
2 ---  
3 STATE OF NEW JERSEY :  
4 : SS  
5 COUNTY OF BURLINGTON :  
6 I, Jeanne Christian, Court  
7 Reporter-Notary Public within and for Burlington  
8 County, Commonwealth of New Jersey, do hereby  
9 certify that the foregoing testimony of Michael  
10 Heggie was taken before me at 1622 Locust  
11 Street, Philadelphia, Pennsylvania on Thursday,  
12 May 17, 2007; that the foregoing testimony was  
13 taken in shorthand by myself and reduced to  
14 typing under my direction and control, that the  
15 foregoing pages contain a true and correct  
16 transcription of all of the testimony of said  
17 witness.  
18 .....  
19 JEANNE CHRISTIAN  
20 Notary Public  
21 My Commission expires  
22 May 21, 2007

76 (Pages 298 to 300)

Henderson Legal Services  
202-220-4158

# EXHIBIT 35

NO. GV401286

THE STATE OF TEXAS ) IN THE DISTRICT COURT  
 )  
ex rel. )  
VEN-A-CARE OF THE )  
FLORIDA KEYS, INC., )  
Plaintiffs, )  
 )  
VS. ) TRAVIS COUNTY, TEXAS  
 )  
ABBOTT LABORATORIES INC., )  
HOSPIRA, INC., B. BRAUN )  
MEDICAL INC., AND BAXTER )  
HEALTHCARE CORPORATION, )  
Defendant(s). ) 201ST JUDICIAL DISTRICT

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF  
MICHAEL THOMAS HEGGIE  
August 22, 2006

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL THOMAS  
HEGGIE, produced as a witness at the instance of the  
Plaintiff(s), and duly sworn, was taken in the  
above-styled and numbered cause on the 22nd of August,  
2006, from 9:08 a.m. to 5:02 p.m., before CYNTHIA  
VOHLKEN, CSR in and for the State of Texas, reported  
by machine shorthand, at the offices of Berger &  
Montague, P.C., 1622 Locust Street, Philadelphia,  
Pennsylvania, pursuant to the Texas Rules of Civil  
Procedure and the provisions attached previously.

FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

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|  |   |
|--|---|
| <p style="text-align: right;">Page 22</p> <p>1 Q. What was your discipline in your graduate<br/>2 courses?<br/>3 A. That was Elizabethan literature.<br/>4 Q. I'm sorry?<br/>5 A. That was Elizabethan literature.<br/>6 Q. Elizabethan literature. Okay. So you don't<br/>7 have an MBA?<br/>8 A. No.<br/>9 Q. But you did teach business math?<br/>10 A. Uh-huh.<br/>11 Q. What level?<br/>12 A. About ninth grade, I think it was. It might<br/>13 have been eighth or ninth.<br/>14 Q. And did I read that you came to work for<br/>15 Abbott Laboratories in 1989; is that true?<br/>16 A. Uh-huh. Yep.<br/>17 Q. Do you recall what year? What month, excuse<br/>18 me?<br/>19 A. I believe July.<br/>20 Q. What was your first duty at Abbott<br/>21 Laboratories?<br/>22 A. Answering the phone.<br/>23 Q. You were hired as a receptionist?<br/>24 A. No. I was hired to answer a telephone from<br/>25 physicians who would phone in orders for a homecare</p>   | <p style="text-align: right;">Page 24</p> <p>1 Q. By "claims processing" we're talking about<br/>2 the process by which Abbott's customers had their cost<br/>3 of obtaining drugs reimbursed by third-party payers<br/>4 such as Medicare and Medicaid or private insurance?<br/>5 A. No, not at all.<br/>6 Q. Okay.<br/>7 A. That wasn't what I was alluding to at all.<br/>8 Q. What kind of claims processing are you<br/>9 alluding to?<br/>10 A. The Renal division at Abbott at one time did<br/>11 direct billing for -- of Medicare for patients who<br/>12 received renal supplies in their house. There's two<br/>13 types of dialysis, renal dialysis. There's<br/>14 hemodialysis, which -- which you go to a center, and<br/>15 there's peritoneal dialysis in which you do at home.<br/>16 Q. Okay.<br/>17 A. And in the home in those days, again, going<br/>18 back to the early '90s, a lot of these home things<br/>19 were very popular with companies and Abbott had a<br/>20 group, called the Renal Group, in which they supplied<br/>21 peritoneal dialysis solutions to patients at home and<br/>22 then in turn billed for those. And that's the billing<br/>23 I'm talking about.<br/>24 Q. Billed who?<br/>25 A. Medicare mostly.</p> |
| <p style="text-align: right;">Page 23</p> <p>1 operation that Abbott had at the time.<br/>2 Q. Was this in the Home Infusion Services --<br/>3 A. Yep --<br/>4 Q. -- department?<br/>5 A. -- it was.<br/>6 Q. Okay. And how long did you work in Home<br/>7 Infusion Services, do you recall?<br/>8 A. Don't recall.<br/>9 Q. I believe I read in your prior testimony that<br/>10 it was a number of years and that you transferred from<br/>11 Home Infusion Services into Renal Care; is that true?<br/>12 A. Well, it wasn't a transfer per se. It was a<br/>13 transition.<br/>14 Q. Could you explain to me what you mean -- how<br/>15 you're distinguishing between transfer and transition?<br/>16 A. Well, in a corporation, in a large<br/>17 corporation, if you're going to transfer there's a<br/>18 formality to it. In this particular case these things<br/>19 were all sort of in one area within Abbott and they<br/>20 all resided within a division and I happened to have<br/>21 some interest in this claims processing and so -- I<br/>22 appeared to be good at it and so Renal had some issues<br/>23 with some claims processing and I worked on those<br/>24 issues and that was sort of the transition rather than<br/>25 transfer.</p> | <p style="text-align: right;">Page 25</p> <p>1 Q. Medicare.<br/>2 A. Yes. When your kidneys fail, Medicare has a<br/>3 specific program that you're allowed to seek<br/>4 reimbursement from. It's called the ESRD program.<br/>5 Q. And what specifically was your responsibility<br/>6 in interacting with this reimbursement by Medicare?<br/>7 A. It was to submit the claims and collect the<br/>8 money.<br/>9 Q. Did you have some involvement in making sure<br/>10 that you got the right amount of money back?<br/>11 A. Yes. I mean, certainly that's part of the<br/>12 job.<br/>13 Q. And as part of the claim, what was the amount<br/>14 of money that you were claiming?<br/>15 A. Well, it would depend on the amount of<br/>16 supplies you got --<br/>17 Q. Okay.<br/>18 A. -- one got.<br/>19 Q. And was it also -- was -- have you heard of<br/>20 an acronym "average wholesale price" or "AWP"?<br/>21 A. Yes. Sure.<br/>22 Q. Was that involved in this claims process with<br/>23 Medicare?<br/>24 MR. BERLIN: Object to the form.<br/>25 A. No. No, not -- not in this because the way</p>  |

7 (Pages 22 to 25)

## FREDERICKS-CARROLL REPORTING

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|   |  |
|---|--|
| <p style="text-align: right;">Page 26</p> <p>1 in which Medicare operates the ESRD program, it's a<br/> 2 set amount of money you get -- one gets for a monthly<br/> 3 supply of goods.<br/> 4 Q. Now, the goods we're talking about here, are<br/> 5 we talking about -- are you talking about durable<br/> 6 medical equipment or are you talking about drugs?<br/> 7 A. Well, they're technically drugs, but they're<br/> 8 really not drugs in the sense when you think of a drug<br/> 9 like penicillin or something like that. They are<br/> 10 solutions. But, yes, they're drugs.<br/> 11 Q. So you're talk -- now, you're talking<br/> 12 ensuring that Medicare is reimbursing the proper<br/> 13 amount for solutions, but what time period are you<br/> 14 referring to?<br/> 15 A. Oh, man. I don't know. Maybe the late --<br/> 16 let's see. I went there in July of '89, so I'd have<br/> 17 to -- probably '90, '91, maybe. Couldn't tell you how<br/> 18 long I did it or how long it went on.<br/> 19 Q. Were you still in Home Infusion Services at<br/> 20 this time?<br/> 21 A. Yes.<br/> 22 Q. Okay. And as part of your job in ensuring<br/> 23 that Medicare is reimbursing the proper amount of<br/> 24 money, your testimony is that AWP was not a factor in<br/> 25 those discussions at that time?</p> | <p style="text-align: right;">Page 28</p> <p>1 the lower right corner that -- TXABT 00081?<br/> 2 A. Yes. Correct.<br/> 3 Q. Okay. And the first page you see<br/> 4 Mr. Kringel's name at the top as the senior<br/> 5 vice-president and -- of Hospital Products and<br/> 6 president of Hospital Products Division. Do you see<br/> 7 that?<br/> 8 A. Yep.<br/> 9 Q. Do you recall Mr. Kringel? Did you know him?<br/> 10 A. Well, I recall Mr. Kringel and, no, is -- you<br/> 11 know, I mean --<br/> 12 Q. It rings true that he was the big boss at<br/> 13 Hospital --<br/> 14 A. Yeah.<br/> 15 Q. -- Products Division?<br/> 16 A. Yeah.<br/> 17 Q. Okay. And underneath that you see various<br/> 18 subordinate units underneath Hospital Products<br/> 19 Division?<br/> 20 A. Right.<br/> 21 Q. And underneath Mr. Kringel and to the right<br/> 22 you see division vice-president/general manager of<br/> 23 Alternate Site?<br/> 24 A. Yes.<br/> 25 Q. Do you see that? Do you see Robertson?</p>  |
| <p style="text-align: right;">Page 27</p> <p>1 A. AWP had nothing to do -- to the best of my<br/> 2 recollection, had nothing to do with renal solutions.<br/> 3 Q. Let me ask you to look at a couple of<br/> 4 documents that have already been marked as exhibits<br/> 5 in -- deposition exhibits in prior depositions.<br/> 6 A. Sure.<br/> 7 Q. And these are organizational charts that I'm<br/> 8 hopeful can -- let's -- this has been previously<br/> 9 marked as Exhibit 45 in this case.<br/> 10 A. Sure.<br/> 11 Q. First of all, let me just ask you to take a<br/> 12 look at it and see if it looks familiar to you.<br/> 13 MR. STETLER: Ray, do you happen to have<br/> 14 another one by any chance?<br/> 15 MR. WINTER: Yeah, I think we do.<br/> 16 Do you have an extra one?<br/> 17 MS. MOORE: Oh, sure.<br/> 18 MR. STETLER: That's okay. I just hate<br/> 19 to share with Eric.<br/> 20 THE WITNESS: It's hard to read. I can<br/> 21 read Kringel's name. I can read Begley's name.<br/> 22 MR. STETLER: Why don't you -- why don't<br/> 23 you wait for a question.<br/> 24 Q. (BY MR. WINTER) Okay, Mr. Heggie. You're<br/> 25 looking at the first page that has a Bates number in</p>  | <p style="text-align: right;">Page 29</p> <p>1 A. Yep.<br/> 2 Q. Do you know that to be Don Robertson?<br/> 3 A. I do.<br/> 4 Q. Okay. Did you know Mr. Robertson or did you<br/> 5 interact with him professionally?<br/> 6 A. Yes.<br/> 7 Q. Okay. And on the next page, if you'll turn<br/> 8 to the next page. There's a Bates number 82.<br/> 9 Underneath Mr. Robertson that you have general manager<br/> 10 for Alternate Site Product Sales, do you see J.V.<br/> 11 Ward? Is that John Ward?<br/> 12 A. That's John Ward.<br/> 13 Q. And then you have a general manager for Renal<br/> 14 Care. That's P.L. Mershimer; is that true?<br/> 15 A. Yes.<br/> 16 Q. Would that be Loreen Mershimer?<br/> 17 A. That's Loreen Mershimer.<br/> 18 Q. Okay. And then to her right you see a<br/> 19 general manager for Home Infusion Services and that's<br/> 20 Mike Sellers, right?<br/> 21 A. Correct.<br/> 22 Q. Okay. Now, at this time, September 1995,<br/> 23 were you working in the Home Infusion Services area or<br/> 24 were you over in the Renal Care area?<br/> 25 A. What time, again?</p> |

8 (Pages 26 to 29)

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1 position, but before we re-read more documents that  
2 we've read several times earlier today, we're out of  
3 time  
4 MR. WINTER: Well, let me make my  
5 position clear before you walk out, Dave. Under our  
6 first amended protective order we are allowed to  
7 designate up to four witnesses as 16-hour witnesses  
8 and we are reserving the right to designate this  
9 witness as a 16-hour witness and we have not completed  
10 our examination. So if we have to take that up --  
11 MR. STETLER: I understand your  
12 position. I've got to go catch a plane.  
13 MR. WINTER: I understand.  
14 MR. STETLER: If anybody would have told  
15 me, I would have made other arrangements.  
16 MR. WINTER: Well, I'm not talking about  
17 continuing today, Dave. We are talking about  
18 continuing at another time.  
19 MR. STETLER: I know. I know.  
20 MR. WINTER: Okay.  
21 MR. STETLER: I've got to go.  
22 THE VIDEOGRAPHER: It's now 5:02. We  
23 are going off the video record. This completes  
24 testimony for today.  
25 (Deposition adjourned at 5:02)

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| 1 | 2    | 3    | 4      | 5      | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 |
|---|------|------|--------|--------|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|
|   | PAGE | LINE | CHANGE | REASON |   |   |   |   |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |    |

Page 332

1 I, MICHAEL THOMAS HEGGIE, have read the foregoing  
2 deposition and hereby affix my signature that same is  
3 true and correct, except as noted above.  
4  
5  
6 MICHAEL THOMAS HEGGIE  
7  
8  
9 THE STATE OF )  
10 COUNTY OF )  
11 Before me, , on this day  
12 personally appeared MICHAEL THOMAS HEGGIE, known to me  
13 (or proved to me under oath or through  
14 ) (description of identity  
15 card or other document) to be the person whose name is  
16 subscribed to the foregoing instrument and  
17 acknowledged to me that they executed the same for the  
18 purposes and consideration therein expressed.  
19 Given under my hand and seal of office this  
20 day of , 2006.  
21  
22  
23  
24 NOTARY PUBLIC IN AND FOR  
25 THE STATE OF

Page 333

1 NO. GV401286  
2 THE STATE OF TEXAS ) IN THE DISTRICT COURT  
3 )  
4 ex rel. )  
5 VEN-A-CARE OF THE )  
6 FLORIDA KEYS, INC., )  
7 Plaintiff(s), )  
8 )  
9 VS. ) TRAVIS COUNTY, TEXAS  
10 )  
11 ABBOTT LABORATORIES INC., )  
12 HOSPIRA, INC. B. BRAUN )  
13 MEDICAL INC., AND BAXTER )  
14 HEALTHCARE CORPORATION, )  
15 Defendant(s). ) 201ST JUDICIAL DISTRICT  
16  
17 REPORTER'S CERTIFICATION  
18 DEPOSITION OF MICHAEL THOMAS HEGGIE  
19 August 22, 2006  
20  
21 I, Cynthia Vohlken, Certified Shorthand Reporter  
22 in and for the State of Texas, hereby certify to the  
23 following:  
24 That the witness, MICHAEL THOMAS HEGGIE, was duly  
25 sworn by the officer and that the transcript of the  
oral deposition is a true record of the testimony  
given by the witness;  
That the deposition transcript was submitted on  
September 1, 2006, to the witness or to the attorney  
for the witness for examination, signature and return  
to me by September 25, 2006;  
That the amount of time used by each party at the  
deposition is as follows:  
Mr. Raymond Winter - 02:52  
Mr. Jarrett Anderson - 03:23  
Mr. Eric Berlin - 07:50

Page 334

1 That pursuant to information given to the  
2 deposition officer at the time said testimony was  
3 taken, the following includes counsel for all parties  
4 of record:

5 MR. RAYMOND WINTER and MS. MARGARET MOORE,  
Attorneys for Plaintiff;  
6 MR. JARRETT ANDERSON,  
Attorney for the Relator;  
7 MR. ERIC BERLIN,  
Attorney for Defendants Abbott  
8 Laboratories, Inc. and Hospira, Inc.  
MS. GINGER APPLEBERRY,  
9 Attorney for Defendant B. Braun Medical,  
Inc.

10  
11 I further certify that I am neither counsel for,  
12 related to, nor employed by any of the parties or  
13 attorneys in the action in which this proceeding was  
14 taken, and further that I am not financially or  
15 otherwise interested in the outcome of the action.  
16 Further certification requirements pursuant to  
17 Rule 203 of TRCP will be certified to after they have  
18 occurred.  
19 Certified to by me this 1st day of September,  
20 2006.

21  
22 Cynthia Vohlken, Texas CSR 1059  
Expiration Date: 12/31/2006  
Firm Registration No. 82  
23 Fredericks-Carroll Reporting  
7719 Wood Hollow Drive, Suite 156  
24 Austin, Texas 78731  
Telephone: (512) 477-9911  
25 (800) 234-3376  
JOB NO. 1782 Fax: (512) 345-1417

Page 335

1 FURTHER CERTIFICATION UNDER RULE 203 TRCP

2 The original deposition was/was not returned to  
3 the deposition officer on , 2006;  
4 If returned, the attached Changes and Signature  
5 page contains any changes and the reasons therefor;  
6 If returned, the original deposition was delivered  
7 to Mr. Raymond Winter, Custodial Attorney;  
8 That \$ is the deposition officer's  
9 charges to the Plaintiff(s) for preparing the original  
10 deposition transcript and any copies of exhibits;  
11 That the deposition was delivered in accordance  
12 with Rule 203.3, and that a copy of this certificate  
13 was served on all parties shown herein on and filed  
14 with the Clerk.

15 Certified to by me this day of  
16 , 2006.

17  
18  
19  
20 Cynthia Vohlken, Texas CSR 1059  
Expiration Date: 12/31/2006  
Firm Registration No. 82  
21 Fredericks-Carroll Reporting  
7719 Wood Hollow Drive, Suite 156  
22 Austin, Texas 78731  
Telephone: (512) 477-9911  
23 (800) 234-3376  
Fax: (512) 345-1417  
24 JOB NO. 1782  
25

85 (Pages 334 to 335)

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# EXHIBIT 36

Jessup, Kaye

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February 14, 2008

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL \* MDL NO. 1456  
INDUSTRY AVERAGE WHOLESALE \* CIVIL ACTION NO.  
PRICE LITIGATION \* 01-12257-PBS  
\_\_\_\_\_\*  
UNITED STATES OF AMERICA, \*  
ex rel. VEN-A-CARE OF THE \*  
FLORIDA KEYS, INC. \* CIVIL ACTION NO.  
\* 06-11337-PBS  
VS. \*  
\*  
ABBOTT LABORATORIES, INC. \* CONFIDENTIAL

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(Caption continues on following page)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

KAYE JESSUP

FEBRUARY 14, 2008

\*\*\*\*\*

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Jessup, Kaye

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February 14, 2008

|  |   |
|--|---|
| <p style="text-align: right;">Page 26</p> <p>1 Q. Okay. What was his explanation?</p> <p>2 A. That we do not set AWP, that the</p> <p>3 difference is -- the spread is the difference</p> <p>4 between AWP and what a business would be reimbursed</p> <p>5 by a third party --</p> <p>6 Q. Okay.</p> <p>7 A. -- government, someone. And that's</p> <p>8 what's called the spread.</p> <p>9 Q. Okay. Now, before you worked for Abbott,</p> <p>10 you worked in private industry, correct?</p> <p>11 A. Yes.</p> <p>12 Q. And they had government contracts for</p> <p>13 some of the patients, correct?</p> <p>14 A. Medicare?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 Q. And you are aware that just because your</p> <p>18 company paid a certain amount for a certain product</p> <p>19 that was -- or drug that was passed on to a</p> <p>20 patient, Medicare or Medicaid might reimburse you</p> <p>21 at a different rate, correct?</p> <p>22 MR. LEWIS: Object to form.</p>  | <p style="text-align: right;">Page 28</p> <p>1 A. That is correct.</p> <p>2 MR. LEWIS: Object to form.</p> <p>3 Q. (By Mr. Black) Okay. And in all your</p> <p>4 listening to TV and the general media, that had</p> <p>5 never come to your attention?</p> <p>6 A. No.</p> <p>7 Q. Okay. So he explained the spread to you?</p> <p>8 A. Uh-huh.</p> <p>9 Q. Were you surprised?</p> <p>10 A. I wouldn't call it surprised. It's just</p> <p>11 informed.</p> <p>12 Q. Well, what he informed you of was, at</p> <p>13 least the allegation was, the people that you sold</p> <p>14 drugs to were actually being paid a different price</p> <p>15 than what the price of the drug Abbott was selling</p> <p>16 it for, correct?</p> <p>17 A. Right.</p> <p>18 Q. And all along, for years and years, you</p> <p>19 had always thought that was the same?</p> <p>20 MR. LEWIS: Object to form.</p> <p>21 Q. (By Mr. Black) Is that correct?</p> <p>22 A. Can you say that again?</p> |
| <p style="text-align: right;">Page 27</p> <p>1 A. I was not aware of that.</p> <p>2 Q. (By Mr. Black) Okay. So your experience</p> <p>3 in private industry was that if Baylor, for</p> <p>4 example, paid \$3.50 for an item, that they would</p> <p>5 always be reimbursed \$3.50 by Medicare or Medicaid?</p> <p>6 MR. LEWIS: Object to form.</p> <p>7 A. I was not aware of any of the</p> <p>8 reimbursement information.</p> <p>9 Q. (By Mr. Black) Okay.</p> <p>10 A. Because I did not work in that area.</p> <p>11 Q. Okay. But -- and as I understand, you</p> <p>12 have a master's degree in nutrition?</p> <p>13 A. Public health.</p> <p>14 Q. Public health, okay.</p> <p>15 A. Uh-huh.</p> <p>16 Q. And in any of your -- your training in</p> <p>17 the area of public health -- and I know it's been a</p> <p>18 while. It's been a while since all of us have been</p> <p>19 to school except for my colleague here. You did</p> <p>20 not discuss the difference between what Medicare or</p> <p>21 Medicaid might pay and the actual cost of providing</p> <p>22 the services or drugs?</p> | <p style="text-align: right;">Page 29</p> <p>1 Q. For years you had always thought that the</p> <p>2 government reimbursed precisely or near what the</p> <p>3 actual cost was to that entity?</p> <p>4 A. I don't know. I did not work with</p> <p>5 government contracts.</p> <p>6 Q. Okay. But you did work with nursing</p> <p>7 homes, for example?</p> <p>8 A. No.</p> <p>9 Q. I thought you handled nursing homes and</p> <p>10 institutions at some point in your career.</p> <p>11 A. No.</p> <p>12 Q. Okay. What --</p> <p>13 MR. LEWIS: I don't understand what</p> <p>14 you're talking about, Larry.</p> <p>15 MR. BLACK: In selling -- selling to</p> <p>16 companies that ran nursing homes or had nursing</p> <p>17 home type pharmacies.</p> <p>18 MR. LEWIS: Now, are you up to her</p> <p>19 time with Abbott now or --</p> <p>20 MR. BLACK: At any time.</p> <p>21 A. Pharmacies that service long-term care</p> <p>22 facilities?</p>                          |

8 (Pages 26 to 29)

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# EXHIBIT 37

Johnson, Deborah L.      CONFIDENTIAL  
Chicago, IL

March 13, 2008

Page 1

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

-----X  
In re: PHARMACEUTICAL                    ) MDL No. 1456  
INDUSTRY AVERAGE WHOLESALE        ) Civil Action No.  
PRICE LITIGATION                        ) 01-12257-PBS  
-----X

THIS DOCUMENT RELATES TO:        ) Judge Patti B.  
United States of America,        ) Saris  
ex rel. Ven-a-Care of the        )  
Florida Keys, Inc. v.                ) Magistrate Judge  
Abbott Laboratories, Inc.,        ) Marianne B. Bowler  
CIVIL ACTION NO. 06-11337-PBS)

-----X

(CAPTIONS CONTINUE ON FOLLOWING PAGE)

CONFIDENTIAL VIDEOTAPED DEPOSITION OF  
DEBORAH L. JOHNSON  
MARCH 13, 2008  
CHICAGO, ILLINOIS

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Johnson, Deborah L. CONFIDENTIAL  
Chicago, IL

March 13, 2008

|   |   |
|---|---|
| <p style="text-align: right;">Page 78</p> <p>1 A. My managers in both the inside sales<br/>2 and then outside sales roles I know had talked<br/>3 about it. And I believe the trainers, Trudi<br/>4 Burchieri and Dave Rotz as well. I'm not sure at<br/>5 which time and who did which one, but I know I<br/>6 had received information about AWP not to discuss<br/>7 it from those people.<br/>8 Q. You indicated that you had received the<br/>9 instruction from your manager when you were a<br/>10 sales rep. So that would have been Mike Beck; is<br/>11 that right?<br/>12 A. That's right.<br/>13 Q. Who was your manager when you were in<br/>14 inside sales?<br/>15 A. Sherrie Mae.<br/>16 Q. During any of the times that you were<br/>17 instructed not to discuss AWP, do you recall<br/>18 anyone else asking why it was not allowed?<br/>19 A. I don't.<br/>20 Q. Or do you recall anyone explaining to<br/>21 you the reasons that you shouldn't discuss AWP<br/>22 with customers?</p> | <p style="text-align: right;">Page 80</p> <p>1 A. I don't.<br/>2 Q. How did you know that they were<br/>3 interested in AWP?<br/>4 A. I was in there asking why they weren't<br/>5 purchasing one of my products that was on their<br/>6 contract, and they said the reason was because<br/>7 our AWP was unfavorable for them.<br/>8 Q. Do you recall about what year that was?<br/>9 A. I don't.<br/>10 Q. Do you recall what the product was?<br/>11 A. I believe it was vancomycin.<br/>12 Q. Did you hear other sales reps, any<br/>13 other sales reps that you worked with, indicated<br/>14 that they were also experiencing that situation?<br/>15 A. No.<br/>16 Q. How did you respond to the customer?<br/>17 A. I told him we can't discuss AWP, and<br/>18 that was the end of that conversation.<br/>19 Q. The time that you received the<br/>20 instruction not to discuss AWP and someone held<br/>21 up a Red Book, had you seen a Red Book before?<br/>22 A. No. I had not.</p> |
| <p style="text-align: right;">Page 79</p> <p>1 A. I don't remember.<br/>2 Q. Even if you don't recall the specific<br/>3 words that someone said, do you recall the<br/>4 general reason why, your understanding of why,<br/>5 you weren't to discuss AWP with customers?<br/>6 MR. SCANNAPIECO: Objection, form.<br/>7 THE WITNESS: I don't.<br/>8 BY MS. FORD:<br/>9 Q. So is it your testimony that you knew<br/>10 not to discuss it but you didn't know why?<br/>11 A. That's correct.<br/>12 Q. Did you understand AWP to be something<br/>13 that your customers were interested in?<br/>14 MR. SCANNAPIECO: Objection, form.<br/>15 THE WITNESS: No.<br/>16 BY MS. FORD:<br/>17 Q. They weren't interested in it?<br/>18 A. One customer was.<br/>19 Q. Which customer was that?<br/>20 A. It was I believe a long-term care or<br/>21 home care pharmacy in Oklahoma City.<br/>22 Q. Do you recall the name of the customer?</p>   | <p style="text-align: right;">Page 81</p> <p>1 Q. Did you ask what is a Red Book?<br/>2 A. I didn't because they were telling us.<br/>3 Q. So in that conversation they said this<br/>4 is the Red Book, and did they say what the Red<br/>5 Book was for?<br/>6 A. They just said it contained AWP prices,<br/>7 and if we saw this from customers that we weren't<br/>8 to discuss it.<br/>9 Q. And at that time did you understand<br/>10 what AWP meant?<br/>11 A. I knew it was a price, and that was<br/>12 all.<br/>13 Q. Did you understand that it stood for<br/>14 average wholesale price?<br/>15 A. Yes.<br/>16 Q. Did you also understand that it was a<br/>17 price at which your customers were reimbursed for<br/>18 the products that they purchased from Abbott?<br/>19 MR. SCANNAPIECO: Objection, form.<br/>20 THE WITNESS: No.<br/>21 BY MS. FORD:<br/>22 Q. What did you understand AWP to be used</p>  |

21 (Pages 78 to 81)

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|   |   |
|---|---|
| <p style="text-align: right;">Page 82</p> <p>1 for?</p> <p>2 A. I didn't. Again, I knew it was a</p> <p>3 price, and that was it.</p> <p>4 Q. Any of the instructions that you</p> <p>5 received about not discussing AWP, would you</p> <p>6 characterize them as firm in tone or direct?</p> <p>7 A. Definitely, yes.</p> <p>8 Q. Did that cause you to wonder what's the</p> <p>9 big deal about AWP, you know, why can't we</p> <p>10 discuss it?</p> <p>11 MR. SCANNAPIECO: Objection, form.</p> <p>12 THE WITNESS: No.</p> <p>13 BY MS. FORD:</p> <p>14 Q. Did you ask any of your coworkers about</p> <p>15 AWP?</p> <p>16 A. No.</p> <p>17 MR. SCANNAPIECO: Objection, form.</p> <p>18 BY MS. FORD:</p> <p>19 Q. After you were promoted to Contract</p> <p>20 Marketing, did you become more familiar with AWP</p> <p>21 at that point?</p> <p>22 MR. SCANNAPIECO: Objection, form.</p>  | <p style="text-align: right;">Page 84</p> <p>1 Q. Did you understand that other sale reps</p> <p>2 were discussing AWP with customers?</p> <p>3 A. No.</p> <p>4 Q. You didn't know one way or the other?</p> <p>5 A. I didn't know one way or the other.</p> <p>6 Q. Did the instruction not to discuss AWP,</p> <p>7 was that only instruction not to discuss AWP with</p> <p>8 customers? Were you allowed to discuss it with</p> <p>9 you coworkers?</p> <p>10 A. We were told not to discuss it with</p> <p>11 customers. I don't recall if we were instructed</p> <p>12 to not talk to coworkers about it, but we didn't.</p> <p>13 Q. Did you understand average wholesale</p> <p>14 price to have something to do with reimbursement?</p> <p>15 MR. SCANNAPIECO: Objection, form.</p> <p>16 THE WITNESS: When I came into Contract</p> <p>17 Marketing, I did.</p> <p>18 BY MS. FORD:</p> <p>19 Q. But prior to that time you didn't know</p> <p>20 what AWP was used for?</p> <p>21 A. No.</p> <p>22 Q. So were you allowed to talk about</p>   |
| <p style="text-align: right;">Page 83</p> <p>1 THE WITNESS: No.</p> <p>2 BY MS. FORD:</p> <p>3 Q. Did you see documents where customers</p> <p>4 would provide you price lists that would contain</p> <p>5 AWP for the Abbott products that they were going</p> <p>6 to purchase?</p> <p>7 A. No.</p> <p>8 Q. Do you recall anything else about the</p> <p>9 instructions that you received not to discuss</p> <p>10 AWP?</p> <p>11 A. No. I do not.</p> <p>12 Q. Is it your testimony that you had not,</p> <p>13 at that point you had not discussed AWP with</p> <p>14 customers; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you know why Abbott would be</p> <p>17 repeating this instruction four to five times</p> <p>18 during the time you were a sales rep if it's not</p> <p>19 something that you were doing?</p> <p>20 MR. SCANNAPIECO: Objection, form.</p> <p>21 THE WITNESS: No. I do not.</p> <p>22 BY MS. FORD:</p> | <p style="text-align: right;">Page 85</p> <p>1 reimbursement with customers?</p> <p>2 A. No.</p> <p>3 Q. If you didn't know they were related,</p> <p>4 how did you know that you weren't supposed to</p> <p>5 talk about reimbursement with customers?</p> <p>6 A. We were told we don't talk about</p> <p>7 reimbursement, we don't talk about AWP. We were</p> <p>8 told not to talk about those things. So I did</p> <p>9 not.</p> <p>10 Q. Did you think that the instruction not</p> <p>11 to talk about reimbursement was separate from the</p> <p>12 instruction not to talk about AWP, or were they</p> <p>13 all part of the same prohibition?</p> <p>14 A. From what I recall, they were separate.</p> <p>15 Yeah, I think they were separate.</p> <p>16 Q. What instruction did you receive, what</p> <p>17 was the detail of the instruction you received</p> <p>18 not to discuss reimbursement?</p> <p>19 A. I don't recall specifically, I don't</p> <p>20 recall specifically what we were given or told.</p> <p>21 Q. For example, if a customer asked you</p> <p>22 whether a particular product was reimbursable,</p> |

22 (Pages 82 to 85)

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Johnson, Deborah L. CONFIDENTIAL  
Chicago, IL

March 13, 2008

|   |   |
|---|---|
| <p style="text-align: right;">Page 426</p> <p>1 MR. SCANNAPIECO: Objection, form.<br/>2 THE WITNESS: No. I was not.<br/>3 MS. FORD: The United States has no<br/>4 further questions at this time and will pass the<br/>5 witness. However, we reserve our right to recall<br/>6 Ms. Johnson based upon Abbott's continuing<br/>7 document production in this case and pending<br/>8 motions to compel documents from Abbott.<br/>9 MR. SCANNAPIECO: Abbott doesn't<br/>10 necessarily agree to reproduce Ms. Johnson for<br/>11 any of the areas of testimony documents that<br/>12 she's testified on today.<br/>13 In addition to that, Abbott would just<br/>14 request that portions of the deposition testimony<br/>15 and exhibits that are related specifically to Ms.<br/>16 Johnson's job performance and/or her individual<br/>17 financial payments from Abbott or her financial<br/>18 relationship to Abbott in the form of stocks and<br/>19 other items be marked "Highly Confidential."<br/>20 We have provided a letter to both the<br/>21 Department of Justice counsel and to the Court<br/>22 Reporter as to that effect.</p>                                    | <p style="text-align: right;">Page 428</p> <p>1 MS. FORD: The United States agrees and<br/>2 agrees to the extent that a third party has<br/>3 designated a document as "Confidential" or<br/>4 "Highly Confidential," that designation stands<br/>5 and is in no way implicated by the letter<br/>6 provided to counsel or the Court Reporter today.<br/>7 THE VIDEOGRAPHER: We are off the<br/>8 record at 5:40 p.m. with the conclusion of the<br/>9 deposition of Deborah L. Johnson.<br/>10 (WHEREUPON said deposition was so<br/>11 adjourned.)<br/>12<br/>13<br/>14<br/>15 <hr style="width: 20%; margin: auto;"/>DEBORAH L. JOHNSON<br/>16<br/>17 Subscribed and sworn to and before me<br/>18 this _____ day of _____, 20____.<br/>19<br/>20<br/>21 <hr style="width: 20%; margin: auto;"/>Notary Public<br/>22</p>  |
| <p style="text-align: right;">Page 427</p> <p>1 MS. FORD: The United States reserves<br/>2 its right to object to the designation of<br/>3 portions of the transcript as "Confidential" or<br/>4 "Highly Confidential" once it actually obtains<br/>5 the portions that counsel has so designated.<br/>6 MR. SCANNAPIECO: I guess I have one<br/>7 more clarification. Per the protocol outlined in<br/>8 the letter, I don't believe that Abbott will be<br/>9 able to either designate or de-designate any<br/>10 items that were a portion of a production from a<br/>11 third party as I guess those designations have<br/>12 been made by third parties.<br/>13 So any documents that are marked with<br/>14 the Bates stamp, I think that come from either<br/>15 MHA or you identified also a production from<br/>16 GeriMed, I guess Abbott takes no position on<br/>17 that. And I believe that those have already been<br/>18 marked "Confidential." And until another party<br/>19 takes an action, those should remain I guess<br/>20 "Confidential" or "Highly Confidential," but<br/>21 Abbott takes no position on designating them or<br/>22 de-designating them.</p> | <p style="text-align: right;">Page 429</p> <p>1 STATE OF ILLINOIS )<br/>2 COUNTY OF C O O K )<br/>3 I, Donna M. Kazaitis, RPR, CSR No.<br/>4 084-003145, do hereby certify:<br/>5 That the foregoing deposition of DEBORAH L.<br/>6 JOHNSON was taken before me at the time and place<br/>7 therein set forth, at which time the witness was<br/>8 put under oath by me;<br/>9 That the testimony of the witness and all<br/>10 objections made at the time of the examination<br/>11 were recorded stenographically by me, were<br/>12 thereafter transcribed under my direction and<br/>13 supervision and that the foregoing is a true<br/>14 record of same.<br/>15 I further certify that I am neither counsel<br/>16 for nor related to any party to said action, nor<br/>17 in any way interested in the outcome thereof.<br/>18 IN WITNESS WHEREOF, I have subscribed my name<br/>19 this 24th day of March, 2008.<br/>20<br/>21<br/>22 <hr style="width: 20%; margin: auto;"/>Donna M. Kazaitis, RPR, CSR 084-003145</p> |

108 (Pages 426 to 429)

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# EXHIBIT 38

Peter Karas

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December 6, 2005

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

- - -

In Re: PHARMACEUTICAL : MDL DOCKET NO.  
INDUSTRY AVERAGE WHOLESALE : CIVIL ACTION #  
PRICE LITIGATION : 01CV12257-PBS

-----  
THIS DOCUMENT RELATES TO:  
ALL ACTIONS  
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CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

The deposition of PETER KARAS, called  
by the Plaintiffs for examination, taken pursuant  
to the Federal Rules of Civil Procedure of the  
United States District Courts pertaining to the  
taking of depositions, taken before KIMBERLY  
WINKLER CHRISTOPHER, a Notary Public within and  
for the County of Kane, State of Illinois, and a  
Certified Shorthand Reporter of said State, taken  
at 77 West Wacker Drive, Suite 3500, Chicago,  
Illinois, on the 6th day of December, 2005, at  
the hour of 9:12 o'clock a.m.

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Peter Karas

HIGHLY CONFIDENTIAL

December 6, 2005

Chicago, IL

Page 54

1 THE WITNESS: Ultimately -- ultimately the  
2 business unit that's got profit and loss  
3 responsibility for the product offering.

4 BY MR. SIEVERT:

5 Q. And just so I understand, what are some  
6 examples of business units, as you're using the term  
7 in that sentence?

8 A. General manager of drugs and drug delivery.

9 Q. And you had that position at some time; is  
10 that right?

11 A. Well, whatever position I had from '99 to -  
12 - not '99, but '89 -- pardon me -- to 2005.

13 Q. Sure.

14 A. 1995.

15 Q. So in that position as general manager of  
16 hospital injectable products from '89 to '96, you had  
17 the authority to approve contract prices; is that  
18 right?

19 A. Yes.

20 MS. TABACCHI: Object to the form.

21 BY MR. SIEVERT:

22 Q. Was your approval required for a contract

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1 to go into effect?

2 MS. TABACCHI: Object to the form.

3 THE WITNESS: Other than -- certain  
4 instances, yes; other instances, I would have  
5 provided guidelines.

6 BY MR. SIEVERT:

7 Q. Okay. In what instances was your approval  
8 required for a contract to go into effect?

9 MS. TABACCHI: Object to the form.

10 THE WITNESS: New products, major GPO  
11 contracts or multiple inputs were received. But I  
12 was ultimately responsible for the final thing, so --

13 BY MR. SIEVERT:

14 Q. Okay. What did you mean

15 BY Multiple inputs received?

16 A. National accounts, contract marketing.

17 Q. Okay. Do you mean that there were  
18 circumstances in which your input, national accounts,  
19 and contract marketing input were all required for a  
20 contract to be approved?

21 MS. TABACCHI: Object to the form.

22 THE WITNESS: Not in a rubber stamp format,

Page 56

1 but from a standpoint of input.

2 BY MR. SIEVERT:

3 Q. Okay. So in those circumstances it's not  
4 like there would be a document that exists that shows  
5 the name on it or signature on it approving a  
6 contract?

7 A. No.

8 Q. Okay.

9 A. Other than the contract signatory from when  
10 it's gone out from contract marketing. I mean, there  
11 would be a signatory on the front representing  
12 hospital products division as the cosignatory on the  
13 contract.

14 Q. Would that be you?

15 A. No.

16 Q. Who would it be?

17 MS. TABACCHI: Object to the form.

18 THE WITNESS: It would have been the  
19 contract -- whoever was running contract marketing at  
20 the time.

21 BY MR. SIEVERT:

22 Q. Okay. And you said that there were other

Page 57

1 instances in which you would promulgate guidelines, I  
2 guess, about the approval of contract prices; is that  
3 right?

4 A. Yes.

5 Q. What kind of guidelines would you propose -  
6 - did you propose?

7 A. If supply was limited, I might instruct  
8 them to try to raise prices. If cost had gone up  
9 because of raw materials, I might tell -- give them  
10 different direction. If supply was limited, I might  
11 give them different direction in terms of, you know -  
12 - any unique set of characteristics, I would provided  
13 direction. When I do a plan at the beginning of the  
14 year, you might give guidelines that you'd like to  
15 try to get your prices up 2 percent.

16 Q. So far we've been -- in this context we've  
17 been talking about the term "contract price."

18 Are there any other terms that you used to  
19 describe contract price?

20 A. No.

21 Q. Are you familiar with the term "list  
22 price"?

15 (Pages 54 to 57)

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December 6, 2005

Chicago, IL

|   |   |
|---|---|
| <p style="text-align: right;">Page 58</p> <p>1 A. Yes.</p> <p>2 Q. What is it?</p> <p>3 A. It's catalog price.</p> <p>4 Q. So do you mean it's the price that's</p> <p>5 published in catalogs offered by Abbott?</p> <p>6 MS. TABACCHI: Object to the form.</p> <p>7 THE WITNESS: Hospital products, again,</p> <p>8 please.</p> <p>9 BY MR. SIEVERT:</p> <p>10 Q. Hospital products.</p> <p>11 A. It is our catalog published price.</p> <p>12 Q. Does hospital products have its own</p> <p>13 catalogs separate from any other catalogs that are</p> <p>14 created by Abbott?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MR. SIEVERT:</p> <p>18 Q. How often do those catalogs -- are those</p> <p>19 catalogs created?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 THE WITNESS: Generally speaking, annually.</p> <p>22 BY MR. SIEVERT:</p>  | <p style="text-align: right;">Page 60</p> <p>1 A. I don't know.</p> <p>2 Q. Is list price also called direct price?</p> <p>3 A. Not familiar with the term.</p> <p>4 Q. Are there any other names that you've heard</p> <p>5 to -- for the term "list price"?</p> <p>6 A. No.</p> <p>7 Q. How does HPD determine the list price for</p> <p>8 its drugs?</p> <p>9 A. Since we're in the generic drug business,</p> <p>10 list price was generally a number less than</p> <p>11 proprietary product in the range of 20 to 25, 30</p> <p>12 percent.</p> <p>13 Q. Who at HPD determined what the list price</p> <p>14 for a drug was?</p> <p>15 MS. TABACCHI: Object to the form.</p> <p>16 THE WITNESS: Initially it would have been</p> <p>17 the business manager, general manager of the</p> <p>18 business.</p> <p>19 BY MR. SIEVERT:</p> <p>20 Q. When was that the case, that the general</p> <p>21 manager of the business --</p> <p>22 A. I can only speak to when I was there, I was</p>   |
| <p style="text-align: right;">Page 59</p> <p>1 Q. Okay. What's the relationship between list</p> <p>2 price and contract price?</p> <p>3 MS. TABACCHI: Object to the form.</p> <p>4 BY MR. SIEVERT:</p> <p>5 Q. If any.</p> <p>6 A. List price would be what a person without a</p> <p>7 contract would pay. Contract price would be what a</p> <p>8 person with a contract would pay.</p> <p>9 Q. You said earlier that the overwhelming</p> <p>10 majority of HPD customers pay the contract price; is</p> <p>11 that right?</p> <p>12 MS. TABACCHI: Object to the form.</p> <p>13 THE WITNESS: Yes.</p> <p>14 BY MR. SIEVERT:</p> <p>15 Q. So conversely, very few people pay the list</p> <p>16 price; is that right?</p> <p>17 MS. TABACCHI: Object to the form.</p> <p>18 BY MR. SIEVERT:</p> <p>19 Q. How many customers pay the list price?</p> <p>20 MS. TABACCHI: Object to the form.</p> <p>21 BY MR. SIEVERT:</p> <p>22 Q. What was the answer?</p> | <p style="text-align: right;">Page 61</p> <p>1 involved in that.</p> <p>2 Q. Okay. So when you were the general manager</p> <p>3 of hospital injectable products, you determined what</p> <p>4 the list price of HPD's drugs were to be; is that</p> <p>5 right?</p> <p>6 A. Yes.</p> <p>7 MS. TABACCHI: Object to the form.</p> <p>8 THE WITNESS: Yes.</p> <p>9 BY MR. SIEVERT:</p> <p>10 Q. Did you seek anyone's input to determine</p> <p>11 what the list price of HPD drugs was to be?</p> <p>12 A. The marketing people that worked for you at</p> <p>13 the time would provide input in terms of what the</p> <p>14 proprietary products list price was, and we'd make a</p> <p>15 determination from there.</p> <p>16 Q. Other than marketing people, was there</p> <p>17 anyone else that you sought input from in determining</p> <p>18 what list prices were to be?</p> <p>19 A. No, not generally.</p> <p>20 Q. How often did you reevaluate the list</p> <p>21 prices for drugs within the HPD?</p> <p>22 MS. TABACCHI: Object to the form.</p> |

16 (Pages 58 to 61)

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# EXHIBIT 39

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

In re: PHARMACEUTICAL )  
INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456  
PRICE LITIGATION ) Civil Action No.  
\_\_\_\_\_) 01-122257-PBS

THIS DOCUMENT RELATES TO: )  
)  
United States of America, )  
ex rel. Ven-a-Care of the )  
Florida Keys, Inc., v. )  
Abbott Laboratories, Inc., )  
and Hospira, Inc. )  
CIVIL ACTION NO. 06-11337-PBS)

\*\*\*\*\*

ORAL AND VIDEOTAPED DEPOSITION OF

PETER KARAS

August 29th, 2007

\*\*\*\*\*

# EXHIBIT 39

|  |   |
|--|---|
| <p style="text-align: right;">Page 30</p> <p>1 BY THE WITNESS:</p> <p>2 A. It was the price billed to wholesalers</p> <p>3 when they purchased product, yes.</p> <p>4 BY MR. ANDERSON:</p> <p>5 Q. And, accordingly, were the WAC prices</p> <p>6 the prices that actually appeared on the invoices</p> <p>7 from Abbott to the wholesalers?</p> <p>8 MS. CITERA: Objection to form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Yes.</p> <p>11 BY MR. ANDERSON:</p> <p>12 Q. Were there any other wholesale prices</p> <p>13 that you were involved in setting or approving from</p> <p>14 1988 through 1997?</p> <p>15 A. No, sir.</p> <p>16 Q. Were you aware of any other wholesale</p> <p>17 prices from 1988 through 1997?</p> <p>18 A. No, sir.</p> <p>19 Q. What group of people were involved in</p> <p>20 setting these WAC prices?</p> <p>21 MS. CITERA: Objection to form.</p> <p>22 BY THE WITNESS:</p> <p>23 A. It would have been, you know, myself</p> <p>24 as a general manager, my marketing people and then</p> <p>25 contract marketing, as well.</p>                                 | <p style="text-align: right;">Page 32</p> <p>1 MS. CITERA: Objection to the form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Well, we had price -- there was a list</p> <p>4 price, as well, that we had.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. And were you involved in the setting</p> <p>7 and approval of list prices?</p> <p>8 A. It was my business, but it was not</p> <p>9 something that I actively managed.</p> <p>10 Q. Who did?</p> <p>11 A. Basically, it was done primarily by</p> <p>12 the contracting people on an annual basis, for</p> <p>13 people that bought direct or did not have contracts</p> <p>14 with us.</p> <p>15 Q. Who was the individual who ultimately</p> <p>16 approved list prices between 1988 and 1997?</p> <p>17 MS. CITERA: Objection to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. It was in my domain, so ultimately I</p> <p>20 was responsible. But it was not something that was,</p> <p>21 I said, actively managed.</p> <p>22 BY MR. ANDERSON:</p> <p>23 Q. What did you do to manage the list</p> <p>24 price process?</p> <p>25 MS. CITERA: Objection to form.</p>   |
| <p style="text-align: right;">Page 31</p> <p>1 BY MR. ANDERSON:</p> <p>2 Q. Was Mr. Harry Adams involved in this</p> <p>3 WAC setting or approval process?</p> <p>4 MS. CITERA: Objection to the form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. He was a conduit to the wholesaler. I</p> <p>7 can't recall that he was specifically involved in</p> <p>8 the setting of those prices.</p> <p>9 BY MR. ANDERSON:</p> <p>10 Q. Do you recall Mr. Adams being involved</p> <p>11 in the process of notifying wholesalers of new WAC</p> <p>12 pricing?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And it's possible that he was involved</p> <p>15 in the process of setting the prices but you're just</p> <p>16 not sure; is that correct?</p> <p>17 MS. CITERA: Objection to form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I can't really -- I can't comment to</p> <p>20 that.</p> <p>21 BY MR. ANDERSON:</p> <p>22 Q. Were there any other prices, other</p> <p>23 than contract prices and WAC prices, that were set</p> <p>24 or approved between 1988 and 1997 at Abbott, to your</p> <p>25 knowledge?</p> | <p style="text-align: right;">Page 33</p> <p>1 BY THE WITNESS:</p> <p>2 A. It was just done -- we just normally</p> <p>3 raised, you know, list prices on an annual basis</p> <p>4 commensurate with CPI or Consumer Price Index.</p> <p>5 BY MR. ANDERSON:</p> <p>6 Q. Why?</p> <p>7 A. There was a subset of customers that</p> <p>8 would buy product from Abbott and they paid list</p> <p>9 price. And it was an entire catalog that included</p> <p>10 virtually all products that were sold and</p> <p>11 manufactured by Abbott, hospital products division.</p> <p>12 Q. What type of customers were part of</p> <p>13 this subset that paid list price?</p> <p>14 A. I cannot give you a specific customer</p> <p>15 type, although, they were noncontracted customers,</p> <p>16 that could be fired departments or, you know, small</p> <p>17 pharmacies, that type of thing. Things that were</p> <p>18 not actively managed as part of the hospital</p> <p>19 business.</p> <p>20 Q. What -- roughly, what percentage of</p> <p>21 Abbott customers paid list price?</p> <p>22 MS. CITERA: Objection to form.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I cannot give you a specific</p> <p>25 percentage, I'm not aware of a specific percentage.</p> |

9 (Pages 30 to 33)

## FREDERICKS-CARROLL REPORTING

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1 exception or a new products, yes. But on an  
2 ongoing, normal basis, probably not.  
3 BY MR. ANDERSON:

4 Q. So who was really making the decision  
5 as to what the price increases would be, you or the  
6 product managers, such as Mr. Sebree and Ms.  
7 Hernandez?

8 MS. CITERA: Objection to form.  
9 BY THE WITNESS:

10 A. They would make the decisions, and  
11 then, ultimately, I would be responsible.

12 BY MR. ANDERSON:

13 Q. So they would make -- they would make  
14 the decision as to what the catalog price should be,  
15 and then you would approve it and, ultimately, be  
16 responsible for it?

17 MS. CITERA: Objection to the form.

18 BY THE WITNESS:

19 A. I was running the business, I was,  
20 ultimately, responsible.

21 BY MR. ANDERSON:

22 Q. And you also mentioned they would, in  
23 turn, be in charge of implementing the price change.  
24 How would they go about doing that?

25 A. They would not physically implement

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1 it. They would go to contract marketing, and  
2 contract marketing would, basically, fill these  
3 kinds of forms out and implement it.

4 Q. And when you're referring to these  
5 types of forms, you're talking about --

6 A. Like this thing, I'm guessing. I  
7 don't know. Like I said, I'm not sure how forms --  
8 how prices were implemented into the system.

9 Q. You don't know the precise logistics,  
10 but you know just conceptually it was done and it  
11 looks like to you Exhibit 1160 and 1161 appear to be  
12 the standard types of forms that were used to  
13 implement the price changes?

14 MS. CITERA: Objection to form.

15 BY THE WITNESS:

16 A. In these two instances, yes, sir.

17 BY MR. ANDERSON:

18 Q. Thank you. And, just conceptually,  
19 big picture, Mr. Karas, if the prices on the  
20 hospital products that you managed were typically  
21 going down in the market, why was it that you all  
22 were taking the inflationary increases each year on  
23 the list prices?

24 MS. CITERA: Objection to form.

25

Page 64

1 BY THE WITNESS:

2 A. I think I mentioned earlier to you  
3 there were a subset of customers that paid list  
4 prices, and it was a profitable business, and we  
5 routinely raised the prices.

6 BY MR. ANDERSON:

7 Q. And I don't want to belabor your prior  
8 testimony, but given that no effort was made to  
9 ascertain the level of list price sales, if Abbott  
10 had determined that the level of list price sales  
11 was extremely small, for instance, around one  
12 percent or less, would that have impacted your  
13 decision to approve annual price increases on the  
14 products you were responsible for?

15 MS. CITERA: Object to the form.

16 BY THE WITNESS:

17 A. Like I mentioned earlier to you, you  
18 know, even a small number, when you're running a  
19 business is of value. And a million dollars is a  
20 million dollars.

21 And so, you know, that made it  
22 worthwhile.

23 BY MR. ANDERSON:

24 Q. So, in your view, even sales of one  
25 percent or less, would justify annual price

Page 65

1 increases to garner that incremental revenue?

2 MS. CITERA: Objection to the form.

3 BY THE WITNESS:

4 A. Well, if you're running the business  
5 and it's a profitable business, you try to maintain  
6 it.

7 BY MR. ANDERSON:

8 Q. Did you ever consider what the impact  
9 was of Abbott's publication of these catalog prices?

10 A. No, sir.

11 MS. CITERA: Objection to the form.

12 BY MR. ANDERSON:

13 Q. Did Mr. Adams ever explain to you that  
14 these catalog prices were being published to price  
15 reporting services, such as First Data Bank and  
16 Red Book?

17 A. No, sir.

18 MS. CITERA: Objection as to form.

19 BY MR. ANDERSON:

20 Q. Did Ms. Cicerale ever explain to you  
21 that these catalog prices were being published to  
22 pricing services, such as First Data Bank and  
23 Red Book?

24 A. No, sir.

25 MS. CITERA: Objection to form.

17 (Pages 62 to 65)

## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

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|   |   |
|---|---|
| <p style="text-align: right;">Page 346</p> <p>1 Q. So FEB is February?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay.</p> <p>4 And the last column that's</p> <p>5 weighted average, do you know what that calculates?</p> <p>6 A. I'm guessing -- not guessing. But it</p> <p>7 was a percentage of sales each of these groups</p> <p>8 represents, and then it's a weighted average of what</p> <p>9 our group average selling price is for this specific</p> <p>10 product group.</p> <p>11 Q. And are you -- the ASP calculations,</p> <p>12 are you familiar with the underlying basis -- let me</p> <p>13 clarify that.</p> <p>14 Are you familiar with the way ASP</p> <p>15 is calculated on this chart?</p> <p>16 MS. CITERA: Objection to the form.</p> <p>17 BY THE WITNESS:</p> <p>18 A. On this product, I'm not sure what's</p> <p>19 included in the Dobutamine category.</p> <p>20 BY MR. LAVINE:</p> <p>21 Q. Do you know who would perform these</p> <p>22 calculations?</p> <p>23 A. For these documents, most likely it</p> <p>24 would have been our financial analyst.</p> <p>25 Q. Is that financial analyst particular</p> | <p style="text-align: right;">Page 348</p> <p>1 Cause No. D-1-GV-04-001286</p> <p>2 THE STATE OF TEXAS ) IN THE DISTRICT COURT OF</p> <p>3 Ex rel. )</p> <p>4 VEN-A-CARE OF THE )</p> <p>5 FLORIDA KEYS, INC. )</p> <p>6 Plaintiffs, )</p> <p>7 v. ) TRAVIS COUNTY, TEXAS</p> <p>8 ABBOTT LABORATORIES INC.,)</p> <p>9 ABBOTT LABORATORIES, and )</p> <p>10 HOSPIRA, INC. )</p> <p>11 Defendants. ) 201st JUDICIAL DISTRICT</p> <p>12 I hereby certify that I have read the</p> <p>13 foregoing transcript of my deposition given at the</p> <p>14 time and place aforesaid, consisting of Pages 1 to</p> <p>15 347, inclusive, and I do again subscribe and make</p> <p>16 oath that the same is a true, correct and complete</p> <p>17 transcript of my deposition so given as aforesaid,</p> <p>18 and includes changes, if any, so made by me.</p> <p>19</p> <p>20 PETE KARAS</p> <p>21 SUBSCRIBED AND SWORN TO before me</p> <p>22 this day of , A.D. 200 .</p> <p>23</p> <p>24 Notary Public</p> <p>25 WITNESS ERRATA SHEET Page #1</p> |
| <p style="text-align: right;">Page 347</p> <p>1 to your unit?</p> <p>2 A. Each business unit had a financial</p> <p>3 analyst that worked on their products and did plans</p> <p>4 and updates and monthly summaries.</p> <p>5 Q. Do you remember who that was in March</p> <p>6 of 1995?</p> <p>7 A. No, sir, I don't.</p> <p>8 Q. But it would have been somebody within</p> <p>9 the hospital injectables business unit?</p> <p>10 A. It would have been somebody in --</p> <p>11 within the hospital products division.</p> <p>12 Q. Part -- part of the separate financial</p> <p>13 unit within --</p> <p>14 A. It was part of the controllers</p> <p>15 organization, sir.</p> <p>16 MR. LAVINE: Okay. Thank you.</p> <p>17 THE WITNESS: Is this it?</p> <p>18 THE VIDEOGRAPHER: This marks the end</p> <p>19 of today's deposition of Pete Karas. Going</p> <p>20 off the record, the Time is now 5:08 p.m.</p> <p>21 MS. CITERA: We'll review.</p> <p>22 FURTHER DEPONENT SAITH NAUGHT.</p> <p>23</p> <p>24</p> <p>25</p>  | <p style="text-align: right;">Page 349</p> <p>1 Cause No. D-1-GV-04-001286</p> <p>2 THE STATE OF TEXAS ) IN THE DISTRICT COURT OF</p> <p>3 Ex rel. )</p> <p>4 VEN-A-CARE OF THE )</p> <p>5 FLORIDA KEYS, INC. )</p> <p>6 Plaintiffs, )</p> <p>7 v. ) TRAVIS COUNTY, TEXAS</p> <p>8 ABBOTT LABORATORIES INC.,)</p> <p>9 ABBOTT LABORATORIES, and )</p> <p>10 HOSPIRA, INC. )</p> <p>11 Defendants. ) 201st JUDICIAL DISTRICT</p> <p>12 I wish to make the following changes for the</p> <p>13 following reasons:</p> <p>14 Page Line</p> <p>15 ____ Change: _____</p> <p>16 Reason: _____</p> <p>17 ____ Change: _____</p> <p>18 Reason: _____</p> <p>19 ____ Change: _____</p> <p>20 Reason: _____</p> <p>21 ____ Change: _____</p> <p>22 Reason: _____</p> <p>23</p> <p>24 Signed _____</p> <p>25</p>  |

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## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

| Page 350 |   | Page 352 |   |
|----------|---|----------|---|
| 1        | WITNESS ERRATA SHEET Page #2                  | 1        | WITNESS ERRATA SHEET Page #4                  |
| 2        | Cause No. D-1-GV-04-001286                    | 2        | Cause No. D-1-GV-04-001286                    |
| 3        | THE STATE OF TEXAS ) IN THE DISTRICT COURT OF | 3        | THE STATE OF TEXAS ) IN THE DISTRICT COURT OF |
| 4        | Ex rel. )                                     | 4        | Ex rel. )                                     |
| 5        | VEN-A-CARE OF THE )                           | 5        | VEN-A-CARE OF THE )                           |
| 6        | FLORIDA KEYS, INC. )                          | 6        | FLORIDA KEYS, INC. )                          |
| 7        | Plaintiffs, )                                 | 7        | Plaintiffs, )                                 |
| 8        | v. ) TRAVIS COUNTY, TEXAS                     | 8        | v. ) TRAVIS COUNTY, TEXAS                     |
| 9        | ABBOTT LABORATORIES INC.,)                    | 9        | ABBOTT LABORATORIES INC.,)                    |
| 10       | ABBOTT LABORATORIES, and )                    | 10       | ABBOTT LABORATORIES, and )                    |
| 11       | HOSPIRA, INC. )                               | 11       | HOSPIRA, INC. )                               |
| 12       | Defendants. ) 201st JUDICIAL DISTRICT         | 12       | Defendants. ) 201st JUDICIAL DISTRICT         |
| 13       | I wish to make the following changes for the  | 13       | I wish to make the following changes for the  |
| 14       | following reasons:                            | 14       | following reasons:                            |
| 15       | Page Line                                     | 15       | Page Line                                     |
| 16       | Change: _____                                 | 16       | Change: _____                                 |
| 17       | Reason: _____                                 | 17       | Reason: _____                                 |
| 18       | Change: _____                                 | 18       | Change: _____                                 |
| 19       | Reason: _____                                 | 19       | Reason: _____                                 |
| 20       | Change: _____                                 | 20       | Change: _____                                 |
| 21       | Reason: _____                                 | 21       | Reason: _____                                 |
| 22       | Change: _____                                 | 22       | Change: _____                                 |
| 23       | Reason: _____                                 | 23       | Reason: _____                                 |
| 24       |   | 24       |   |
| 25       | Signed _____                                  | 25       | Signed _____                                  |

  

| Page 351 |   | Page 353 |  |
|----------|---|----------|--|
| 1        | WITNESS ERRATA SHEET Page #3                  | 1        | STATE OF ILLINOIS )                                  |
| 2        | Cause No. D-1-GV-04-001286                    | 2        | ) SS:  |
| 3        | THE STATE OF TEXAS ) IN THE DISTRICT COURT OF | 3        | COUNTY OF COOK )                                     |
| 4        | Ex rel. )                                     | 4        | I, SHARON BERKERY, a Notary Public within            |
| 5        | VEN-A-CARE OF THE )                           | 5        | and for the County of Cook, State of Illinois, and a |
| 6        | FLORIDA KEYS, INC. )                          | 6        | Certified Shorthand Reporter of said state, do       |
| 7        | Plaintiffs, )                                 | 7        | hereby certify:                                      |
| 8        | v. ) TRAVIS COUNTY, TEXAS                     | 8        | That previous to the commencement of the             |
| 9        | ABBOTT LABORATORIES INC.,)                    | 9        | examination of the witness herein, the witness was   |
| 10       | ABBOTT LABORATORIES, and )                    | 10       | duly sworn to testify the whole truth concerning the |
| 11       | HOSPIRA, INC. )                               | 11       | matters herein;                                      |
| 12       | Defendants. ) 201st JUDICIAL DISTRICT         | 12       | That the foregoing deposition transcript             |
| 13       | I wish to make the following changes for the  | 13       | was reported stenographically by me, was thereafter  |
| 14       | following reasons:                            | 14       | reduced to typewriting under my personal direction   |
| 15       | Page Line                                     | 15       | and constitutes a true record of the testimony given |
| 16       | Change: _____                                 | 16       | and the proceedings had;                             |
| 17       | Reason: _____                                 | 17       | That the said deposition was taken before            |
| 18       | Change: _____                                 | 18       | me at the time and place specified;                  |
| 19       | Reason: _____                                 | 19       | That I am not a relative or employee of              |
| 20       | Change: _____                                 | 20       | attorney or counsel, nor a relative or employee of   |
| 21       | Reason: _____                                 | 21       | such attorney or counsel for any of the parties      |
| 22       | Change: _____                                 | 22       | hereto, nor interested directly or indirectly in the |
| 23       | Reason: _____                                 | 23       | outcome of this action.                              |
| 24       |   | 24       | IN WITNESS WHEREOF, I do hereunto set                |
| 25       | Signed _____                                  | 25       | my hand and affix my seal of office at Chicago,      |

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## FREDERICKS-CARROLL REPORTING

AUSTIN (512) 477-9911 - HOUSTON (713) 572-8897 - SAN ANTONIO (210) 222-9161

1 Illinois, this 10th day of September, 2007.

2

3

4

5

6 Notary Public, Cook County,

7 Illinois.

8 My commission expires 7/22/2010.

9

10 C.S.R. Certificate No. 84-4327

11

12

13 Q & A TIME

14 Mr. Anderson - 4 hours, 35 minutes

15 Mr. Lavine - 1 hour, 5 minutes

16 Mr. Sisneros - 17 minutes

17

18

19

20

21

22

23

24

25

# EXHIBIT 40

Kassak-Weiss, Lisa - Vol. I  
Tampa, FL

March 25, 2008

Page 1

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL

INDUSTRY AVERAGE WHOLESALE

PRICE LITIGATION

MDL NO. 1456

-----

Civil Action No.:

THIS DOCUMENT RELATES TO:

01-12257-PBS

United States of America,

Judge Patti B. Saris

ex rel. Ven-a-Care of the

Florida Keys, Inc., v. Abbott

Magistrate Judge

Laboratories, Inc., CIVIL

Marianne B. Bowler

ACTION NO. 06-11337-PBS

-----

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

(Cross Notice)

IN RE: PHARMACEUTICAL

INDUSTRY AVERAGE WHOLESALE

PRICE LITIGATION

MDL NO. 1456

-----

Henderson Legal Services, Inc.

202-220-4158

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Kassak-Weiss, Lisa - Vol. I  
Tampa, FL

March 25, 2008

|  |  |
|--|--|
| <p style="text-align: right;">Page 126</p> <p>1 MR. DEMONTE: Objection to the form.<br/> 2 A. For the most part, yes.<br/> 3 Q. Why do you think in this time frame the<br/> 4 solutions and equipment business seems to be<br/> 5 popping up so frequently on your weekly reports?<br/> 6 A. Well, it was specific to Amerinet. They<br/> 7 might have had a new agreement just launched; and<br/> 8 while I was calling on the account, in order to<br/> 9 represent Abbott's agreement, which not only<br/> 10 included Ultane and Anzemet but also included<br/> 11 solutions and equipment, while I was there, I would<br/> 12 let them know of it.<br/> 13 Q. Have you ever heard the term "spread"<br/> 14 used in connection with reimbursement for drugs?<br/> 15 A. I've heard of it.<br/> 16 Q. What do you understand it to mean?<br/> 17 A. The amount of money that they would be<br/> 18 reimbursed for for the drug less what they spend to<br/> 19 acquire it.<br/> 20 Q. Did you ever have any understanding that<br/> 21 Abbott had some unusually high spreads on certain<br/> 22 drugs?</p> | <p style="text-align: right;">Page 128</p> <p>1 identification.)<br/> 2 MR. DEMONTE: Thanks.<br/> 3 THE WITNESS: Thank you.<br/> 4 BY MS. OBEREMBT:<br/> 5 Q. Would you please review Exhibit 16, which<br/> 6 is a week-ending report dated April 17th, 1999,<br/> 7 with your name on the left, and it appears to have<br/> 8 been faxed on April 19th, 1999.<br/> 9 A. Uh-huh.<br/> 10 THE VIDEOGRAPHER: Do you want to change<br/> 11 the tape now?<br/> 12 MS. OBEREMBT: Sure. We're going to go<br/> 13 off the record and change the tape now while you're<br/> 14 looking at the document.<br/> 15 THE VIDEOGRAPHER: We're going off the<br/> 16 video record. It's 1:40 p.m.<br/> 17 (Pause)<br/> 18 THE VIDEOGRAPHER: We're on the video<br/> 19 record. It's 1:42 p.m.<br/> 20 BY MS. OBEREMBT:<br/> 21 Q. Have you had a chance to review Exhibit<br/> 22 16?</p>  |
| <p style="text-align: right;">Page 127</p> <p>1 A. No.<br/> 2 Q. Did you ever have any understanding that<br/> 3 some other manufacturer had unusually high spreads<br/> 4 on certain drugs?<br/> 5 A. No.<br/> 6 Q. Did you ever find out what the AWP was of<br/> 7 any of the anesthesia drugs that you were selling?<br/> 8 A. No.<br/> 9 Q. Did you ever find out what the wholesale<br/> 10 acquisition cost was for any of the anesthesia<br/> 11 drugs you were selling?<br/> 12 A. No. I know what the wholesaler billed<br/> 13 the customer, but I don't know what the wholesale<br/> 14 acquisition cost was.<br/> 15 Q. So you didn't know how much the<br/> 16 wholesaler paid Abbott to acquire the drugs --<br/> 17 A. No.<br/> 18 Q. -- is that correct?<br/> 19 MS. OBEREMBT: I'd like to have this<br/> 20 marked as<br/> 21 Exhibit 16.<br/> 22 (Exhibit Kassak-Weiss 016 was marked for</p>   | <p style="text-align: right;">Page 129</p> <p>1 A. Yes.<br/> 2 Q. Does this look like another one of your<br/> 3 weekly reports?<br/> 4 A. Yes.<br/> 5 Q. Would you look at Bullet Point No. 2<br/> 6 where you discussed in the spreadsheet for a<br/> 7 customer called North Point Surgery Center.<br/> 8 A. Yes.<br/> 9 Q. What were you attempting to do in the<br/> 10 spreadsheet there?<br/> 11 A. To identify which of the Abbott IV sets<br/> 12 would be equivalent to their sets that they were<br/> 13 currently using that were manufactured by Baxter<br/> 14 and to list the price that was available to them<br/> 15 off the Amerinet contract.<br/> 16 Q. Did you know what price Baxter was<br/> 17 offering them?<br/> 18 A. I don't know. They may have told me; I<br/> 19 don't know.<br/> 20 Q. Did customers sometimes tell you what<br/> 21 prices they were getting from a competitor --<br/> 22 A. Yes.</p> |

33 (Pages 126 to 129)

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Kassak-Weiss, Lisa - Vol. I  
Tampa, FL

March 25, 2008

| Page 198   | Page 200  |
|--|---|
| <p>1 specialist for, I think -- and I was the only<br/>2 anesthesia specialist for about a year. So the<br/>3 other districts did not have these right away.<br/>4 Q. But they did incorporate the anesthesia<br/>5 specialist later on in the other districts?<br/>6 A. Yes.<br/>7 MR. SISNEROS: Okay. I don't have any<br/>8 other questions.<br/>9 MR. DEMONTE: At this time I would like<br/>10 to mark as Exhibit 29, Kassak-Weiss 29, a March<br/>11 25th, 2008, letter to all counsel and all court<br/>12 reporting staff advising that Abbott Laboratories<br/>13 is requesting that portions of the deposition<br/>14 transcript and/or exhibits to the deposition of<br/>15 Lisa Kassak-Weiss containing -- and there are<br/>16 different categories of information, certain<br/>17 information will be deemed confidential or should<br/>18 be deemed confidential, and Certain information<br/>19 should be deemed highly confidential.<br/>20 I would just request that the court<br/>21 reporting staff review this exhibit, and I've<br/>22 provided a copy to the government, who is here, and</p> | <p>1<br/>2<br/>3<br/>4<br/>5 LISA KASSAK-WEISS<br/>6<br/>7 SUBSCRIBED AND SWORN before and to me this<br/>8 day of _____, 2008.<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16 NOTARY PUBLIC<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22 My Commission expires:</p> |
| Page 199   |   |
| <p>1 Mr. Sisneros is here via phone. Other than that, we<br/>2 have no questions.<br/>3 THE VIDEOGRAPHER: We're going off the<br/>4 video record. It's 4:09 p.m.<br/>5 THE REPORTER: Would you like to read or<br/>6 waive?<br/>7 MR. DEMONTE: No. We never waive.<br/>8 (Discussion off the record.)<br/>9 THE VIDEOGRAPHER: We're on the video<br/>10 record. It's 4:10 p.m.<br/>11 MR. DEMONTE: We're back on the record.<br/>12 This is Mark DeMonte. I inadvertently labeled the<br/>13 March 25th, 2008, letter as Exhibit 29. It<br/>14 should be Kassak-Weiss Exhibit 28.<br/>15 (Exhibit Kassak-Weiss 028 was marked for<br/>16 identification.)<br/>17 THE VIDEOGRAPHER: Now we're going to go<br/>18 off the video record. It's 4:10 p.m.<br/>19 (Statement of counsel concluded at 4:10 p.m.)<br/>20<br/>21<br/>22</p>   |   |

51 (Pages 198 to 200)

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